FILED

97 1004 OCT 14 1997

OFFICE OF THE CLERK

In the Supreme Court of the United States

October Term, 1997

Malek Ahmed

Petitioner

v.

Charles Greenwood,

and Mortgage Guarantee and Title Company

Respondants

On Petition for Writ or Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR WRIT OF CERTIORARI

Malek Ahmed, Pro Se
38 Maple Street
Providence, RI 02903
(401) 274-5493

176 pp

QUESTIONS PRESENTED FOR REVIEW

I. Whether the Amended Complaint - if sufficiently stating a "RICO" cause of action according to FRCP Rule 9(B) and Rule 12 (b)(6) - has been improperly disregarded by the lower Courts in favor of focusing its review and decision on the markedly inferior quality of Malek Ahmed's Pro-Se verified complaint. If so does this indicate a departure from the 'Accepted and Usual' course of Judicial proceedings and its search for the truth so as to call for an exercise of this Court's power of supervision; would this consideration especially hold true since an inconsistency or an incongruity would arise in that the Magistrate of the District Court of Rhode Island reviewed the Amended Complaint under a 12 (B)(6) standard whereas the First Circuit Court of Appeals limited its review of the Amended Complaint merely on a Rule 60 (B) standard.

II. Should The Supreme Court of the United States finally 'settle' this important question of Federal Law whether the *Becher second determination principle* rightfully applies to the Pro-Se litigant under these facts and circumstances.

III. By properly drawing reasonable inferences from the facts and exhibits presented in a light most favorable to the plaintiff, can there be found a basis for a cause of action based on "RICO". At the very least, should suspicions of proscribed conduct have been aroused, so as to warrant a second determination in order to allow the Pro-Se to amend his complaint. SINCE the proof of a cause of action based on "RICO" necessarily involves the use of circumstantial evidence by drawing reasonable inferences and conclusions from established facts AND if the First Circuit Court failed to draw such inferences at all before dismissing by motion an otherwise valid "RICO" claim THEN could it be stated that such Courts are really *Judicially Legislating Civil "RICO" out of existence*. And, if this were so, would this occurrence not be deemed a usurpation of the function of Congress

TABLE OF CONTENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

OPINIONS BELOW....1
JURISDICTION....2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED....1
STATEMENT OF THE CASE....2
REASONS FOR GRANTING THE WRIT....4
CONCLUSION....26

I. Whether the Amended Complaint - if sufficiently stating a "RICO" cause of action according to FRCP Rule 9(B) and Rule 12 (b)(6) - has been improperly disregarded by the lower Courts in favor of focusing its review and decision on the markedly inferior quality of Malek Ahmed's Pro-Se verified complaint. If so does this indicate a departure from the 'Accepted and Usual' course of Judicial proceedings and its search for the truth so as to call for an exercise of this Court's power of supervision; would this consideration especially hold true since an inconsistency or an incongruity would arise in that the Magistrate of the District Court of Rhode Island reviewed the Amended Complaint under a 12 (B)(6) standard whereas the First Circuit Court of Appeals limited its review of the Amended Complaint merely on a Rule 60(B) standard.

II.. Should The Supreme Court of the United States finally 'settle' this important question of Federal Law whether the Becher second determination principle rightfully applies to the Pro-Se litigant under these facts and circumstances.

III. By properly drawing reasonable inferences from the facts and exhibits presented in a light most favorable to the plaintiff, can there be

found a basis for a cause of action based on "RICO". At the very least, should suspicions of proscribed conduct have been aroused, so as to warrant a second determination in order to allow the Pro-Se to amend his complaint. SINCE the proof of a cause of action based on "RICO" necessarily involves the use of circumstantial evidence by drawing reasonable inferences and conclusions from established facts AND if the First Circuit Court failed to draw such inferences at all before dismissing by motion an otherwise valid "RICO" claim THEN could it be stated that such Courts are really Judicially Legislating Civil "RICO" out of existence. And, if this were so, would this occurrence not be deemed a usurpation of the function of Congress.

INDEX OF APPENDICES

APPENDIX A Opinion of the Court of Appeals reported in NOs. 96-1 145; 97-1037(cir. 1997)

APPENDIX B Opinion of the District Court for the District of Rhode Island - C.A. 95-95P

APPENDIX C Report and Recommendation of the Magistrate, adopted by the District Court for the District of Rhode Island

APPENDIX D Transcript of Magistrate Lovegreen upon review of Rule 60(B) Motion October 1, 1996, page 33

APPENDIX E

(1) 'The Amended Complaint' by counsel

(2) The Verified Complaint by Pro-Se

(3) Exhibits included in the Appendix

APPENDIX F

-Title 18, U.S.C.. Section 1964 (a) and Section 1964(c)

-Title 18 U.S.C. Section 1961 et seq ("RICO")

-Title 28 U.S.C. Section 133 (a) Federal Question

TABLE OF AUTHORITIES

Barr v. Abrams, 81O F2 358 (2nd Circuit) -I987.....7

Burke v. Dowiing, 944 F.SUPP. 1036 (NY).....10

Crowe v Henry, C.A. 5th - No. 96-30588 (Texas- 1997).....10

Feinstein v. Resolution Trust Corp., 942 F.2nd, 34, 43.....9

First America v. Al-Nahvan, 943 F. SUPP. 1 107
(District of Columbia).....10

Haines v. Kenzer, 404 US 519 (1972).....7

New England Data Services, Inc. Vs. Becher,
829 F.2nd 286 @ pg. 292.....10

Plumber's Pension v. DeCon Inc.,
846 F.SUPP. 342 (1996 - NY).....10

Santani v Gierbolini, 937 F.SUPP. 130 (I996 - NY).....7

Victory Wines v. Vina Santa Carolina,
933 F.SUPP. 347 (NY).....10

STATUTES

UNITED STATES CODES

Title 18, U.S.C. Section 1964(a) and Section 1964(c).....1

Title 18 U.S.C. Section 1961 et seq ("RICO") 1

Title 28 U.S.C. Section 1254 (1).....1

Title 28 U.S.C. Section 133(a) Federal Question.....1

OPINIONS BELOW

The opinion of the Court of Appeals is unpublished and appears as Appendix A to this petition. The unpublished written opinion of the District Court for the District of Rhode Island appears in Appendix B. The unpublished Report and Recommendation of the Magistrate, adopted by the District Court for the District of Rhode Island, appears in Appendix C. The October 1, 1996 District of Rhode Island transcript of hearing on R 60(B) motion appears as Appendix E. The District of Rhode Island transcript of hearing appears as Appendix E(l), (2) & (3).

JURISDICTION

The Court of Appeals' opinion in this matter was filed on July 14, 1997 and is set forth in Appendix A. This Court's jurisdiction is invoked under title 28 U.S.C. Section I254(I), 28 U.S.C. 1257.

STATUTORY PROVISIONS-INVOLVED

The statutory provisions involved are set forth in Appendix F.

STATEMENT OF JURISDICTION OF LOWER COURT

The United States District Court, District of Rhode Island had jurisdiction pursuant to Title 18. U.S.C. Section 1964 (a) and (c). Right to sue and treble damages, 18 U.S.C. Section 1961 et seq ("RICO"); 28 U.S.C. 133(a) Federal Question .

STATEMENT OF THE CASE

This arises and stems from the lower Court decision to review the amateurish Pro-Se verified complaint instead of the professionally prepared Amended Complaint by counsel in order to determine that a RICO based cause of action has been sufficiently plead according to FRCP 9(b) and 12(B)(6). Both complaints are vital parts of the record, yet there has been nary any rebuttal or consideration given to the boldly and bluntly stated RICO allegations contained within the Amended Complaint. Instead there seemingly has been a willful neglect to disregard the shocking revelation of a renowned Rhode Island attorney, Greenwood, who master minded (in collusion with others) a brilliant scheme involving a series of related predicate acts designed to deceive and defraud his own client! (the plaintiff) out of millions of dollars of real estate and other holdings. In this regard, the lower Court has so far departed from the Accepted And Usual course of Judicial proceedings and the search for truth and justice as to call for an exercise of this Court's power of supervision.

The *Becher second determination* principle of law has a particular significance in this case because the Amended Complaint exemplifies and embodies the very meaning of Becher in action. The Amended Complaint not only substantively establishes a "RICO" cause of action (certainly sufficient to withstand a Rule 12(b)(6) attack) but it is also, by its existence, is representative of what a pro-se litigant could have done if he were afforded an opportunity to do so.

The Becher principle, as it applies to pro-se litigants, is such an important question of federal law that it should be settled by This Court; especially considering the fact the person who is seeking such a second determination, or opportunity to amend, is a pro-se litigant, and worthy of leniency as promised to him by this Court in many decisions regarding such issues.

The Amended Complaint serves just such a purpose, although in this case it has been shunned and avoided. Therefore, the interest

would be best served by this Supreme Court in reconciling the discrepancy that can and has occurred in the lower Courts regarding the pro-se litigants where dictum of leniency is espoused, but in reality, ignored. All too often, Pro-Se litigants are treated unfavorably and even harshly.

Lastly, the exhibits presented by the pro-se in the District Court revealed the truth of this bold yet brilliant scheme. They can be read very clearly. The Circuit Court had stated that it recited the facts in a light "most favorable to Ahmed"; when, in fact, nothing could be further from the truth. Reasonable inferences and conclusions that could be adduced from these exhibits established the existence of a "RICO" scheme to commit other acts of fraud, embezzlement, forgery, conspiracy, misrepresentation, extortion and other acts of misconduct that become apparent upon in-depth review of the documents in this case. A civil "RICO" action would be the only way to redress the kind of activities described above and the resultant harm to the Plaintiff.

At the very least, suspicions should have been, sufficiently aroused regarding this behavior, which can only be described as criminal, thus triggering the *Becher second determination* principle. The Amended Complaint clearly dispels all doubt that this case is a "RICO" cause of action, with all of its essential elements in place and articulated so precisely that it could probably serve as a model for anyone pleading this beleaguered and oft-maligned civil remedy. It is no secret that many Courts, such as the First Circuit, privately loathe and despise civil "RICO" and would Judicially Legislate the statute out of existence if they were so empowered. However, the Courts do not have such power, only Congress can make such a decision. However, what power the Courts do wield is just as effective: they can merely dismiss civil "RICO" cases, out of hand, by dispositive motion no matter how clearly such causes of action may be articulated or how pressing the need for such relief may be.

REASONS FOR GRANTING WRIT

The petitioner cites special and important reasons to urge This Court to grant Certiorari to determine whether the lower Court provided to the petitioner a proper review of his claim based on "RICO". The petitioner presented as part of the record in the lower Court, the Pro-Se complaint (amateur) and a 53-page Amended Complaint (professional), together. The more encompassing Amended Complaint raises the specter that the petitioner was the victim of a heinous criminal conspiracy to defraud him of his real estate holdings...and all engineered by his own attorney! As such, it would serve as a further indictment or diminishment of the legal profession in the minds of the general public. The lower Court had limited its review to only the Pro-Se complaint while completely ignoring the substantive truth contained within the Amended Complaint. It could cynically be perceived that a client may be taken full advantage of by his own lawyer in the same manner suggested in this case with the lower Court's tacit endorsement of such. The Highest Court in the United States simply cannot permit such a happenstance, least of all to a hapless Pro-Se litigant who has been promised by Federal law to receive leniency and protection by the Federal Courts.

The Pro-Se has sufficiently plead facts concerning this "RICO"-based cause of action to have at least aroused suspicion that he was a victim of a grand scheme of fraud perpetrated against his property interests. He should have been afforded a liberal interpretation of the 'second determination' Becher principle, especially in the face of the other Circuit Court opinions that would be in disagreement with the First Circuit's.

Certiorari has been granted in such situations where there is such conflict among the lower Courts, as well as regarding particular questions, such as Federally guaranteed rights of leniency for Pro-Se litigants.

Furthermore, the First Circuit Court had limited its review only

to the 'four corners' of the pro-se complaint and refused to draw reasonable inferences based on the facts and circumstances and documents presented in order to determine that a "RICO" cause of action was adequately plead under rule 12(b)(6).[1]

The petitioner urges this Court to grant Certiorari with an eye towards affording him a proper review of his "RICO" case under 12(B)(6) - based on the Amended Complaint.

I

The Circuit Court erred by limiting its 12(b)(6) review of this case to the four corners of the pro-se complaint without properly considering the Amended Complaint and the accompanying exhibits for the same purpose of determining whether a "RICO" cause of action was adequately plead, or could have been - the public importance of which is the need to disclose the truth fully and unequivocally.

On October I , 1996, the Magistrate of the District Court reviewed the Amended Complaint based on the Rule 60(B) motion filed. The magistrate specifically stated that the Amended Complaint itself did not sufficiently state or plead a cause of action based upon a violation of "RICO"[2]. The Magistrate, by his statement, indicated he had directly or implicitly reviewed the Amended Complaint under a 12(b)(6) standard. Therefore, when the second appeal (97-1037) was joined, this issue should have been directly addressed by the First Circuit. Instead, that Court limited its review of the Amended Complaint to a rule 60(B) standard; the significance of which was never adequately explained by the Circuit Court.

---

1. See Plaintiff's brief, page 7-11, to understand the travel of the case as to how the Amended Complaint was joined on appeal to the 1st Circuit along with the Pro Se verified complaint.

2. See transcript of hearing before Magistrate Lovegreen, October 1, 1996, page 33.

Left unanswered to the present day is the issue concerning the Magistrate's review and assessment of the Amended Complaint on October 1, 1996, based on rule 12(b)(6). He found it still to be not sufficient under 12(b)(6) and that was the issue appealed by the Plaintiff/ Petitioner in 97-1037 which the First Circuit Court had never addressed.

More importantly, the issue as to why the Amended Complaint was so narrowly reviewed (based only upon Rule 60(B)) is of paramount public concern because of the enormity and gravity of the Petitioner's allegations. How can legal professionals, sworn to uphold the law and its truths, stand by idly when implicit to these allegations is a direct accusation of wrongdoing that strikes at the very heart of the legal profession. Honest legal professionals must react in protest in order to recapture, if possible, any vestige of hope, trust and confidence that the public had previously held in regard for the once noble legal profession.

The Amended Complaint reveals the clear truth as to the wrongful scheme to defraud the Plaintiff. Furthermore, it sufficiently sets forth a "RICO" cause of action that complies with rule 12(b)(6). If the Court avoids review of this complaint, the public could perceive an intent to willfully avoid the truth in the face of protecting those who would be politically significant by reviewing only the Pro-Se complaint and not the Amended Complaint. To simply ignore the Amended Complaint is to tacitly endorse what the Defendants have done to the Plaintiff. The First Circuit Court's failure to address this crucial issue would further signify the *Departure From The Accepted and Usual Course of Judicial Proceedings* in its search for the truth so as to call for an exercise of this Court's power of supervision.

II

Should Pro-Se Petitioner be given his promised leniency under the Becher Doctrine in order to provide him with a 'second determination ' to amend his pleadings to sufficiently plead a "RICO" cause of action according to Federal Rule Civil Procedure (FRCP) rule 12(b)(6) and 9(B)? Would, then, the hybrid principle of law, Becher meets Pro-Se, *promote uniformity among the Circuit Courts which remain in conflict with the First Circuit Court over this issue.*

The Federal legal maxim regarding pro-se complaints is insurmountably clear, that such complaints are construed "generously", "liberally", "leniently", etc., for which there are multiple citations headed by Haines v. Kernor, 404 US 519 (1972). The federal Courts do not favor dismissal of pro-se complaints under FRCP 12(b)(6) unless it appears "beyond all doubt" that the Plaintiff could prove no set of facts in support of his claim. In Haines, at page 521. In the second Circuit Court, "RICO" cases and Civil Rights cases are held to an even more stringent standard before dismissal under rule 12(b)(6) as long as such pro-se complaints "contain some specific allegation" supporting the claim (only then will a motion to dismiss be denied). See Also Santini v. Gierbolini, 937 F. SUPP. 130, 133 (1996) citing Barr v. Abrams, 810 F2d 358, 363 (Second Circuit 1987).

It is unreasonable for the First Circuit Court to suggest that the Pro-Se complaint does not accord itself favorably with this standard.[3] As clearly articulated in this petition, there is not only direct evidence of fraud, embezzlement, misrepresentation, extortion, forgery and many other criminal acts of misconduct and conspiracy contained

3. The First Circuit Court stated directly in Becher at page 291 that "to require the Plaintiff to plead the time, place and contents of communication... without allowing some discovery...seems unreasonable." The Plaintiff in the Becher case even had an attorney, and was not Pro Se as was this Plaintiff.

within the 'four corners' of the Pro-Se's complaint[4], but there is also circumstantial evidence with reasonable inferences and conclusions drawn from the established facts and documents contained in the official record that support this claim as well. Furthermore, the Amended Complaint leaves no doubt whatsoever that a "RICO" claim does exist. Therefore, it seems the First Circuit Court has recited pure dictum about affording leniency for Pro-Se litigants, reciting words that in reality mean very little when there is no action to support these words. The petitioner requests of the Supreme Court that this apparent contradiction in terms and actions be reconciled by the granting of Certiorari. Affording the Petitioner a 'second determination' to have his claim reviewed based on the Amended Complaint would be the absolute minimum of leniency to be provided to the Pro-Se litigants.

The Becher Doctrine provides for a 'second determination' of a RICO complaint before an outright dismissal is warranted[5]. The Feinstein Rule rejects this notion when allegations of fraud are not specified at all and no discovery was attempted at all by the attorney for the Plaintiff[6]. The pro-se Plaintiff's case necessarily falls somewhere between these two parameters (Becher and Feinstein).

There are many allegations of fraud that were set forth with specificity. So at what point has a party litigant set forth a claim based on fraud with enough specificity so as to trigger the application of the *Becher Doctrine*?

---

4. Pauline Patchis, a renowned handwriting expert who is widely respected by every judge in Rhode Island concluded that there were forgeries and other acts of misconduct perpetrated against the plaintiff. The courts have yet to take into consideration any of her findings. (See Exhibit) This fact, standing alone, should have alerted the lower court of the fraud and misconduct involved in this case, yet it was ignored.

5. Becher at 292

6. Feinstein v. Resolution Trust, 942 F2, 34, 42. Here the claimant (with attorney) made no attempt at discovery, sought no leave to amend, and did not plead fraud with specifity at all. This case is distinguishable from Feinstein, yet Defendant's have implored the Court to apply this harsh rule.

Does the fact that a Pro-Se drafted this "RICO" complaint with supposed leniency, weigh more heavily in his favor in order to apply the *Becher* 'second determination principle' rather than invoking the harsh *Feinstein Rule*? As such, it would give rise to the hybrid principle of law, 'Becher Meets Pro-Se'.

The Pro-Se is not asking to have his complaint accepted directly as sufficiently plead under the "RICO" statute, rather he is asking that his Amended Complaint be reviewed according to the 12(b)(6) standard because under the 'Becher meets Pro-Se" standard, he would have been afforded a 'second determination' which would have resulted in the creation of the Amended Complaint.

Other jurisdictions do not take such a harsh view as the First Circuit concerning the second determination principle. Discovery was afforded to RICO and other claimants alleging fraud before dismissal under rule 12(b)(6). (First America Corp. v. Al-Nahyan, 1943 F. SUPP. 1107 (District of Columbia); Vittory Wines v. Vina Santa Carolina, 933 F. SUPP 347 (S.D. N.Y.); In Re Harvard Knitwear 153 B.R.

Furthermore, other Jurisdictions permit "RICO" to survive rule 12(b)(6) motions upon (bare minimum pleadings) - IUE, AFL-CIO Pension v. Hermzann 9 F3rd 1049 (Cone, 2nd Circuit; (It must appear with certainty that the Plaintiff can prove no set of facts entitling him to relief when 12(b)(6) motions will be granted) - Plumbers Pension Fund v. DeCon, 846 F. SUPP. 342; (as long as some of the allegations of fraud are adequate the motion will be denied.) Burke v. Dowling (NY) 1944 F.SUPP. 1036; (so long as the plaintiff demonstrates entitlement to relief).

Lastly, a remarkably similar case such as the Petitioner's, in the Eastern District of Texas, denied the defendant's motion to dismiss a plaintiffs "RICO" claim based on predicate acts of mail and wire fraud against his long-time lawyer, business associate and friend, who was alleged to have had fraudulent intent in the handling of the Plaintiffs assets. The Texas Court stated that the plaintiff "only had to present

evidence that would permit a reasonable finder-of-fact to accept his version of the facts." Crowe v. Henry, C.A. 5, No. 96-30588, June 4, 1997 William Wayne Justice - for Eastern District of Texas 1997 WL 295710.

Such conflicting differences between various Circuit Courts and other Federal Courts on this issue would suggest special and important reasons for this Court to grant a Writ of Certiorari. [7]

III

Petitioner's counsel did not make "HYPERBOLIC ASSERTIONS" but had actually drawn proper and reasonable inferences and conclusions based on established facts contained in the record as he is permitted under Rule 12(b)(6).

Petitioner strongly objects to the Circuit Court's reference in the opinion (July 14, 1997, pg 11) that counsel made "hyperbolic assertions", when counsel correctly drew reasonable and proper inferences based on the established facts, documents and evidence contained in the record.

However, since the lower Court reviewed the complaint and these facts so narrowly to begin with, then the lower Court would also narrowly draw inferences from these same facts; if it drew any inferences at all in the Petitioner's favor as required by FRCP 12(b)(6).

The petitioner had been placed in a catch-22 paradox as a result of this dilemma. Since the lower Court did not draw any inferences from the facts established in the record, favorable or otherwise, then the Petitioner would not be able to adequately plead fraud in order to afford

---

7. The Plaintiff argued to the Lower Court that the mistake by the Magistrate of the District Court under Rule 60 (b) is that he failed to consider the application of the Becher second determination principle, to the case at hand before dismissing . His mistake was he forgot to address the second determination principle at all in his report, when he should have done so.

himself a 'second determination', which would enable him to amend his complaint. Hence, he would not be able to adequately state a "RICO claim that complied with FRCP 12(b)(6). Since the Plaintiff was not afforded an opportunity to so amend, then his case is dismissed under Rule 12 (b) (6).[8] It is thus, a catch-22 situation. The Supreme Court might grant Certiorari in order to reconcile this apparent contradiction of judicial action.

To suggest the inferences and deductions drawn and made from the facts and evidence contained in the record do not lead to the conclusion there is a sufficient basis to plead a "RICO" cause of action based on Rule 12(b)(6) is more than an oversight, it is incomprehensible.

---

8. The District Court claimed the pro se complaint was insufficient while the First Circuit Court told the petitioner's counsel that his amended complaint said "too much - it cannot be proven." Counsel responded that because the Defendant/Respondent had exclusive control of the pertinent facts and circumstances that would clearly support the basis for a RICO claim, it was necessary to draw reasonable inferences based upon established facts in order to support the conclusions reached.

Such a scenarios illustrates why discovery must be provided to the petitioner and he be afforded a second determonation. Otherwise it would be inherently impossible under the circumstances to sufficiently plead a RICO cause of action under FRCP 12 (b) (6).

In effect, what the lower court has done is to handcuff the Plaintiff by denying him the opportunity to gather vital information and to adequately plead RICO and thereafter, penalize him for not doing so (dismissal) by not drawing the proper inferences in his favor.

The Amended Complaint was drafted drawing such reasonable inferences in order to sufficiently state a RICO claim. However, the Circuit Court rejected the assertions in the Amended Complaint, stating they could not be proven, and did so in complete absence of discovery!

The scheme or pattern of racketeering activity began in 1986 and continued with a series of related predicate acts occurring in 1987, 1988 1989, 1990, 1991 and thereafter, as clearly outlined in the Amended Complaint.[9] Each particular element required to support a "RICO" cause of action had been clearly established. [10] Certain elements were necessarily deduced, logically, by drawing such reasonable inferences. The notion of such circumstantial evidence or the legal definition of inference, is defined as "the proof of the various facts or circumstances which usually attend the main fact in dispute, and therefore tends to prove its existence, or to sustain, by their consistency, the hypothesis claimed. Or, as otherwise stated, it consists of reasoning from various facts which are known or have been proven to establish such as are conjectured to exist." *Black's Law Dictionary, with citations from a multitude of cases and principles in support.*

Moreover, the general principle relating to inferences is skewed even more so in the light most favorable to Petitioner's claim of allegations based on "RICO" upon review of FRCP Rule 12(b)(6) motion to dismiss. A much greater liberal application of inference-drawing is warranted under these circumstances.

---

9. The Amended Complaint, Pages 8-9, sets forth the commencement of the RICO claim with a pattern of racketeering relating to the years 1986-87 in complete detail. The record of evidence supports the detailing of the continued and related nature of the predicate acts the followed through 1988, 89, 90, 91 and thereafter.

10. for instance, on May 25, 1989, the discharge of mortgage promulgated by Greenwood and the forged PSA of December 16, 1988, proffered by MGT, were filed at the same time at the Providence Land Evidence Records (only four minutes apart!). It can reasonably be inferred the Greenwood filed both documents at the same time, whereby it could be stated that Greenwood acted in concert with, or as an agent for, Loft or MGT, or both. Once such a relationship is established, the element of 'enterprise' is satisfied. This example, as well as many others, is clearly articulated in the Amended Complaint.

The following predicate acts, as established by the Magistrate in the District Court and commonly accepted as truth throughout the course of this appeal, clearly set forth reasonable inferences drawn that indicate that all the elements of a "RICO" claim are present.

A OCTOBER 13, 1988/LARSON PSA

On October 13, 1988, the plaintiff, Malek Ahmed, entered into a purchase and sale agreement ("PSA") with defendant William Larson ("Larson") for the sale of the Plaintiff's property at 47 Maple Street in Providence, Rhode Island, the sale of which was contingent upon Larson obtaining financing [See: Exhibit E, Pg A-19 in Appendix].

Plaintiff had hired defendant Charles Greenwood ("Greenwood"), an attorney, to represent him in the sale and to draft the agreement. Larson placed a $5,000 deposit on the property, which Greenwood held in escrow for the plaintiff [See: Exhibit 10, Pg A-23 in Appendix]. On October 20, 1988, Larson gave plaintiff notice of his inability to obtain financing. Plaintiff then instructed Greenwood to return the deposit immediately, but Greenwood did not attempt to return the deposit at that time [See: Exhibit 11, Pg A-24 in Appendix].

Proven Fact (P.F.): The October 13, 1988 agreement was considered to be null and void upon receipt of Larson's notice of inability to obtain financing on October 20, 1988. Also, Larson waited until December 19,1988 before indicating that he wanted to close.

Reasonable Inference (R.I.): Larson waited until the Loft PSA was executed (of which he had always been aware), then he created the perceived cloud on the title because he did not want to risk the cancellation of the PSA.

R.I.: He wanted to create an ambiguous situation to exploit later. Individuals normally demand the return of a deposit when a PSA is canceled.

P.F.: If Greenwood had returned the $5,000 immediately, then the agreement would have been null and void without ambiguity. But

Greenwood waited until December 20, 1988 to send the deposit back.

R.I.: Greenwood's actions ensured cloud on the title could be arranged to assist Larson's plan to enforce the contract. Greenwood could later make a case that he was not accountable for this failure to return the deposit by arguing that the 10\ 20\88 note terminated the agreement and that Malek advised him not to return the deposit (but the note was too ambiguous to terminate the agreement).

P.F. Greenwood, for reasons unclear, arranged and prepared the December 16, 1988 PSA between the plaintiff and Loft.

R.I.: He was actually leading his client into a trap in order to create a perceived cloud on the title.

P.F.: On or about December 20, 1988, Larson claimed that he was ready, willing and able to close on the deal even though he had no financial commitment, no title work performed, and no certified inspection of the premises.

R.I.: Larson never intended to buy the property, he merely wanted to exercise his leverage once the Loft PSA was executed so the plaintiff wouldn't be able to call his bluff.

P.F.: Larson recorded his PSA on December 19, 1988, immediately after the Loft PSA was executed on December 16, 1988.

R.I.: This was not a coincidence as Larson's actions (which were in concert with co-conspirators Greenwood, Larson, MGT and others) were consistent with this scheme to create the cloud on the title, appropriately after the Loft PSA was executed. Under state law, a recorded PSA expires within two months. Hence, the defendants had this motivation to record the Lis Pendens.

B December, 1988 - THE LOFT PSA

Still quoting from the Magistrate's Report and Recommendation

"On December 16, 1988, the Plaintiff had entered into a different PSA/ with [CCAS] for the same property at 47 Maple Street. Greenwood also drafted this PSA, even though he had not yet

attempted to return the deposit to Larson. At that time Loft placed a $25,000 deposit on the property. According to Plaintiff, Loft then instructed defendant, Mortgage Guarantee and Title Company: to place a lien against the property regarding this $25,000, deposit.

Plaintiff also alleges that on January 11, 1989 [Report in error: actual date is 1/11/94], Larson had also filed a lien against Plaintiff's property regarding his $5,000 deposit." .

P.F.: Greenwood drafted the 2nd PSA and ran the risk of committing malpractice, with the Larson PSA still unresolved.

R.I.: Greenwood would not make such an obvious error unless it fit perfectly within this scheme. With the Plaintiff caught in the 'trap' the defendants' plan was working perfectly.

P.F.: Loft entered into the CCAS/Ahmed PSA knowing about the Larson PSA and did not demand a contingency clause regarding the Larson PSA be inserted into the contract. He had also given Ahmed a $25,000 non-refundable deposit.

R.I.: Loft knew the Larson PSA would become a cloud on the title, and he could then take advantage of the cloud in the furtherance of the defendants' scheme to defraud the Plaintiff of his real estate holdings.

R.I.: He knew that the $25,000 would not be lost - it was an enticement.

P.F.: Loft instructed MGT to place a lien against the subject property on 12\27\89 in order to secure the $25,000. The contract clearly stated that the deposit was non-refundable and the Larson 'cloud' had not yet been revealed.

R.I.: Loft knew that the Larson cloud was being arranged in furtherance of the defendants' scheme to defraud the Plaintiff of his real estate holdings.

P.F.: MGT failed to discover the Larson PSA, which was filed on 12\1 9\88, and Loft never filed a subsequent action against MGT.

R.I.: The failure was intentional, as both Loft and MGT were in complicity regarding this scheme to defraud the Plaintiff. If MGT revealed the Larson PSA on or about 12\27\88, when they were first hired to examine the title of the subject property, the issue of the 'cloud' could have then been rectified and would not be available for exploitation by the defendants on July 12, 1989.

P.F.: The 12\16\88 PSA sets forth 75 days for performance, yet it had an extension clause inserted [allegedly and without the Plaintiff's knowledge] ON THE SAME DAY, which extended the time for performance until August 1, 1989. Hence, there are inconsistent time provisions with such a long delay (8 months in order to close on the property). Why did MGT not understand the obvious wrongdoing and advise accordingly? Why did MGT just let the 75 days pass without advising Loft of such?

R.I.: In more of a deductive conclusion, it can said that MGT is not innocent by any standard. Loft mailed MGT on or about 12\27\88, a PSA which has been found to contain a forged signature on the extension clause. The forgery was found by a Court-certified handwriting expert, and MGT recorded this document on 5\25\89.

This provides clear evidence of defendants furtherence of the scheme to exploit a perceived 'cloud' on the title. Loft gave clear instructions to MGT (seemingly ignored for six months thereafter) in the letter of 12\28\88, and the forged PSA was enclosed with that letter.

P.F.: Mr. Ahmed's property was located in a down-trodden section of Providence, and successful business entities such as Loft, Larson, MGT and Greenwood, fervently pursued Ahmed's property by actively planning and executing a scheme such as above.

R.I.: There were (and still are) development plans for these properties involving sizeable government projects, and the owners of these properties were sure to profit greatly from these plans.

In any event, on March 1, 1989, the deadline for the closing arrived, as set forth by the December 16, 1988 PSA (which specifically

stated "time" was "of the essence").

When the time allotted for the closing had expired, the defendants recorded the forged PSA with the forged extension clause. This document was recorded on May 25, 1989. The document was actually a photo-copy of the original PSA.

This fraudulently created and recorded PSA contained an inserted clause near the bottom. It was in a different type-face, which purports to extend the validity of the PSA until August 1, 1989. This extension allowed the defendants time to perfect their encumbrances of the Plaintiff's potentially very valuable real estate holdings, which they effectively succeeded in doing on July 12, 1989.

C March of 1989 (closing)

"On March 8, 1989, Loft gave Plaintiff an additional $30,000 ("earnest money") towards the purchase of 47 Maple Street. The closing took place on March 14, 1989. The day after the closing, Larson filed a Lis Pendens against the address. Then, on March 16, 1989, Plaintiff was informed by MGT that the closing would be voided because the Larson lien created a cloud on the title. Additionally, MGT indicates that it recorded a second PSA between Plaintiff and CCAS on May 5, 1989 at the request of Loft. This PSA is not specifically mentioned in the Plaintiff's complaint. Plaintiff does state that he "discovered that the PSA entered into with CCAS contained a second set of signature [sic] indicating that the parties agreed to extend the time for performance until August 1, 1989," and that he "never signed the PSA a second time.

"Larson sued Plaintiff on March 18, 1989 for specific performance of the first PSA. GREENWOOD FILED AN ANSWER BEFORE PLAINTIFF WAS EVEN INFORMED HE WAS BEING SUED.

P.F.: (The $30,000 "earnest payment" was given to lure the plaintiff. An "earnest money" payment is a unilateral exchange, and

there was no reciprocal obligation on the part of the Plaintiff). Loft gave a large additional sum of money (he had already given a $25,'000 non-refundable deposit) to the Plaintiff without having received any security interest when the 75 days for performance had expired and the contract had become void (No 'cloud' on the title had been revealed as of the time of the earnest money payment on March 8, 1989). Why had Loft taken such an enormous risk?

R.I.: The conclusion would be that Loft and the other defendants felt that the Plaintiff was a 'pigeon' they could impose their will upon, and also keep important facts from him, and all in furtherance of their scheme to defraud him. They took no risk at all by doing this, for they knew what they were doing all along. (Plaintiff had NEVER been provided a copy of the Loft PSA and had no way of knowing when performance was scheduled.) Defendants altered the Loft PSA and forged the Plaintiffs signature on the extension clause in order to secure Loft's interests. They felt Ahmed was too naive and trusting to inquire further about his rights under the PSA and would do only as Greenwood instructed (Ahmed never did ask to see or review the Loft PSA after its initial signing on December 16, 1988). The defendant's counted on Ahmed's blind faith. The earnest money payment was given in the form of a bank check which would have had to be run through the check clearing house system of the Federal Reserve Bank of Boston (if not physically, then at least electronically - as balances of payments into and out of member banks must be maintained and reported to the "Fed" in an effort to determine a member bank's daily "reserve requirement"). Further, since each financial institution obtains a fee for, or benefit from, the service it provides, the use of the check clearing house system constitutes wire fraud in the conduct of interstate commerce as defined by law. Therefore, since an earnest money payment of $30,000 was proffered in the pursuit of fraudulent activity, the defendants have clearly committed an act of wire fraud in the conduct of interstate commerce (with the same holding true for ALL checks issued by the defendants in the pursuit of their grand scheme to defraud the Plaintiff).

P.F.: Some or all of the defendants received a Notice of Lis Pendens from Larson and the seller's attorney Greenwood did not try to close before the Lis Pendens was actually filed on March 15, 1989, with the Land Evidence Records of the City of Providence. Loft never revealed any cloud on the title existing prior to March 15, 1989. Once MGT searched the title, there would be no reason NOT to close on March 14, 1989. On that date, during the closing, the defendants postponed the closing. Ahmed was then induced to execute the promissory notes, which they referred to as "receipts", thereby exploiting Ahmed's perception of this supposed cloud on the title.

On March 14, 1989, the Plaintiff appeared for the closing at MGT without the benefit of counsel (although the Plaintiffs counsel, Greenwood, was supposed to be present and had assured the Plaintiff that he would be). The Plaintiff executed the deed on that date, but was told to come back on March 16, 1989 to receive a check for the proceeds of the sale. No reason was given for this delay, which only served to afford Larson the opportunity to file his Lis Pendens on March 15, 1989. Loft and the other defendants received the notice of Lis Pendens on or about March 13, 1989, which is why they delayed the March 14, 1989 closing. They did so in order to ensure that it would be recorded (thereby creating the cloud). Subsequently, the defendants misrepresented that this closing date was held on 3\16\89. They did so in order to create the impression that the Lis Pendens preceded the closing (thereby affecting the status of the title) - which it did not.

The Plaintiff returned to MGT on March 16, 1989 and was told he would not be receiving the check for the proceeds from the closing because MGT had discovered the Lis Pendens, which created a 'cloud' on the title. In furtherance of their scheme to defraud the Plaintiff, MGT delayed delivery of the proceeds of the sale for two days in order to permit the Larson lien (the Lis Pendens) to be filed. If the closing had taken place on March 14th, as scheduled (the Plaintiff actually signed the deed, as well as other closing documents on that date), then the Larson lien, filed on March 15th, could not have affected the Plaintiff's transfer of the good title to the subject property. The defendants, having

failed to record the Larson Lis Pendens prior to the closing scheduled for March 14th, found it necessary to delay the closing until the Lis Pendens could be recorded. This last-minute maneuver further protected their fraudulent activity, effectively prohibiting any transfer of the Plaintiff's property until they had encumbered and\or acquired ALL the Plaintiffs properties.

R.I.: This afforded Larson the opportunity to record the Lis Pendens, thereby creating the 'cloud' on the title which would later impede closing. Such a deductive conclusion could be reasonably drawn then, with the Plaintiff having sheepishly executed the deed and having signed the closing sheets on March 14, 1989. MGT was handling all of these arrangements during March and they did not react and disclose to the Plaintiff what was being done for and to him. Nor did MGT disclose the Larson PSA recorded on December 19, 1989. (They are in the business of finding such items placed on the record. But yet, they found the Larson Lis Pendens only a day after it was filed.) They were risking liability to Loft. MGT must have known that if the parties had indeed closed on March 14, 1989, then the Lis Pendens filed on March 15, 1989 would not be of any consequence to Ahmed (Loft would then inherit the Lis Pendens problem because MGT failed to discover the Larson PSA filed on December 19, 1988). MGT purposely postponed the March 14, 1989 scheduled closing date so that the Lis Pendens problem would effect the Plaintiff. Why did MGT (of all of the defendants), not discover the obvious discrepancy whereby the deed and closing statement refers to Loft as the buyer while the PSA denotes only CCAS as the buyer? Later, in 1993, CCAS returned as the party of interest when the defendants recorded a discharge on June 4, 1993 of the CCAS/Plaintiff PSA, 12\16\88 with the Land Evidence Records of the City Providence.

P.F.: MGT knowingly and intentionally recorded a PSA replete with fraud and forgery on May 25, 1989. MGT waited until May of 1989, even though Loft had instructed them to record the PSA on December 27, 1988. MGT had six months to recognize the inconsistent time sequences of the PSA (75 days for the performance, yet also

including an obviously inconsistent extension to August 1, 1989) The document was patently defective on its face, and MGT is a professional title company that would have recognized such discrepancies. Thereafter, MGT mailed copies to the defendants and all interested parties, which constitutes mail fraud.

MGT did not record a second PSA between the Plaintiff and CCAS on May 25, 1989 (as indicated in the Magistrate's Report) because there was no second PSA executed between the Plaintiff and CCAS. MGT recorded the first PSA that had an extension clause later inserted upon it by fraudulent means, The Plaintiffs signature consenting to this extension clause is a clear forgery [See: Report of Pauline Patchis].

R.I.: The significance of this action is understood in the context of this entire scheme: the defendants' attempt to preserve the validity of the PSA, which had been fraudulently extended to 8\1\89, so that the defendants could later take advantage of the Plaintiffs weaknesses. The discharge of the 1986 Mortgage, which the Plaintiff held on the 290-292 Friendship Street property, which he had sold to Loft, was recorded on May 25, 1989 by Greenwood at 10:24 AM. Just four minutes later the forged Loft PSA was recorded (10:28 AM - same date), supposedly by MGT. Although MGT admits it had recorded the Loft PSA, clearly the inference can be drawn that Greenwood, may have, in fact, actually recorded the fraudulent Loft PSA himself.

Thereafter, this pattern or series of fraud causes this scheme to become more lucid; both ends of the trap thusly set. The Loft and the Larson respective 'clouds' on the title made the Plaintiff feel as though it were his own fault. All the defendants needed to accomplish at this juncture was to incorporate the other remaining parcels of the Plaintiff's property into this aspect of the scheme. The Plaintiff was very vulnerable at this point, and the defendants knew that they could take complete advantage of him in this condition.

On July 12, 1989, promissory notes that encompassed ALL the Plaintiffs properties had become part of the exploitation scheme.

D The July 12, 1989 Promissory Notes

"Greenwood prepared the documents and represented them as "receipts" for the deposit money Plaintiff had received from Loft and CCAS. CCAS also offered an additional $30,000, making the total, $85,000 towards the deposit on 47 Maple Street. They also told Plaintiff these, "receipts" would be destroyed in two weeks once the matter with Larson was resolved. Yet, these "receipts" were promissory notes and a mortgage deed on 47 Maple Street and other properties owned by the Plaintiff.

As is more fully referenced above, the issuance of and processing of said checks constitutes mail and wire fraud in pursuit of the Defendants' scheme to defraud the Plaintiff.

P.F.: Ahmed was overseas and was contacted by Greenwood who told Ahmed there was urgent business which needed immediate attention and Ahmed returned as a result. (FOREIGN COMMERCE AND WIRE FRAUD ESTABLISHED). All of the documentation described above is part of the record of this case.

P.F..: Greenwood prepared the promissory notes which were signed by the Plaintiff on July 12, 1989, and which had fraudulently converted non-refundable deposit money and earnest money into the interest bearing promissory notes secured by a mortgage deed which happened to encompass ALL of the Plaintiff's properties. Greenwood, with his vast experience with the drafting of such documents, was able to readily draft the notes himself, ostensibly on behalf of his client (the Plaintiff). However, the notes are clearly to the benefit of the defendant, Loft, and to the severe detriment of Greenwood's client.

R.I.: Greenwood could not have mistakenly drafted these notes which so severely harmed his client. These notes encumbered not just 47 Maple Street, but also two other parcels which were totally unrelated to the transaction at hand. It is clear then, that the drafting of these notes was just another step in the defendant's scheme to defraud. For that matter, Greenwood was representing Loft in other legal matters when he was supposedly representing the Plaintiff concerning

these notes: this constitutes a clear conflict of interest.

Greenwood had drafted similar notes which did exhibit due professional care, in complete contrast with those he drafted on July 12, 1989. The promissory notes of July 12, 1989 were improper, unprofessional, and, in fact, illegal because:

1. They fraudulently converted deposit and earnest moneys into interest bearing notes,

2. They were drafted on behalf of Loft individually, and not on behalf of the entity (CCAS) which had given the deposit and earnest moneys to the Plaintiff,

3. The Plaintiff had NEVER conducted business with Loft as an individual; therefore, Loft had NO RIGHT, under pretext of the law, to obtain any such notes from the plaintiff,

4. The Plaintiff was told he was signing "receipts" and never fully informed by either his attorney or by Loft,

5. The Plaintiff was not given a three-day right of rescission as required by Federal Law regarding mortgages of one's principle residence, (Loft makes many such loans and falls under this requirement of Federal law.)

6. The notes contained clauses (in DIRECT violation of Rhode Island State Law) which permits the holder to accelerate payment if he felt he was insecure,

7. The notes were created without any consideration having been paid the Plaintiff, in violation of the Uniform Commercial Code,

8. The notes did not contain certain due dates which could be determined on the face of the notes; therefore, none of the notes contained a "sum certain", and were thus, non-negotiable (yet they were somehow negotiated by Loft to the Rosenblatt's).

P.F.: Greenwood made such blatant errors so as to go unnoticed.

R.I.: He, as well as the other defendants, knew the Plaintiff would believe the promissory notes were merely "receipts"- as they had told

him. Also, he and the defendants intended to encumber ALL of the Plaintiff's properties and to subsequently transfer these properties to themselves. It was to this end the notes were drafted with vague and ambiguous language. They to commandeer all the Plaintiffs properties for a mere investment of $85,000 (FMV $500,000) (It should be remembered that the Plaintiff had invested the greater portion of the $85,000 in the properties, preserving the investment of the defendants.)

The Plaintiff (1991) found himself 'squeezed' by both Loft (through the use of threatened foreclosure on the notes) and by Larson (through the use of the Courts in the matter of Larson v. Ahmed in which Larson sought specific performance). It was at this time that the Plaintiff began to finally suspect that something was remiss, and began to question his attorney, Greenwood; receiving no satisfactory answer, the Plaintiff fired Greenwood and ultimately uncovered the scheme.

Clearly the account set forth is not "hyperbolic", but genuine and of a serious nature. The facts to support a "RICO" cause of action are clearly present. The matter now rests with this Court to permit the Plaintiff to recover, or to suffer further. The integrity of the legal system in this nation demands the Plaintiff receive Justice.

CONCLUSION

For the reasons set forth above, the Plaintiff prays a Writ of Certiorari be issued by this Court to review the judgment and opinion of the Court of Appeals in this matter.

Further, the plaintiff, by this claim, has presented a most unique and appalling revelation that strikes at the heart of corruption within the infrastructure of the legal system in the State of Rhode Island and Providence Plantations. This case is so repugnantly replete with clear and obvious attorney misconduct, fraud and judicial indifference that it should be entered into the annals of jurisprudence as a paradigm of How Not To Serve Justice. The Plaintiff's former attorney, in collusion with a numerous assortment of conspirators and miscreants, many of whom have forged a niche for their chicanery in the legal system, master

minded a six-year plot to defraud, embezzle, extort and wrongfully convert the Plaintiff's property and wealth through a correlating series of transactions and predicate acts - without the Plaintiffs knowledge.

Now that these actions have been clearly exposed, it is the obligation of legal professionals to hearken to the distress call of the voiceless minion who oft-times has only our legal institution for personal recourse.

The United States Supreme Court cannot condone the First Circuit Court's approach to this civil "RICO" case, and this Pro-Se litigant now begs the Court for the deserved protection that has been promised to him, yet so poorly lacking.

The 'second determination' principle provides the appropriate means in order to achieve this result. Likewise, a review of the 12(b)(6) motion should be based on the merits of the Amended Complaint, which has thus far been overlooked.

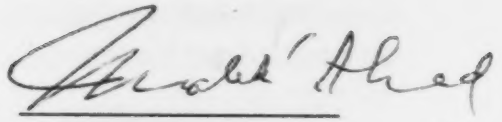
This case should not be so narrowly viewed so as to facilitate the injustice perpetuated by the defendants and the lower Courts, all of whom have been 'chanting the mantra' of RICO throughout the course of this action. The 'black letter law' relating to "RICO" presupposes a fully developed complaint set forth and drafted with professional proceedings. The Plaintiff's complaint was never evaluated appropriately under Rule 12(b)(6) because the lower Court had refused to allow the Plaintiff to present a 'ripened' claim to begin with (the Amended Complaint), yet the Court has steadfastly castigated him for his failure to do so.

The Plaintiff must be permitted to present the evidence for his claim before the courts, and to not merely have his claim dismissed because he did not necessarily follow each and every rule normally reserved for attorneys.

Were this Honorable Court to do otherwise, it would promote further injustice for those who have little voice.

Wherefore, Plaintiff prays this Court grant a Writ of Certiorari.

Respectfully Submitted



Malek Ahmed, Pro Se
38 Maple Street
Providence, RI 02903
(401) 274-5493

APPENDIX

United States Court of Appeals
For the First Circuit

Nos. 96-1165 , 97-1037

MALEK AHMED,
Plaintiff, Appellant,

v.

JON ROSENBLATT. CAROL ROSENBLATT,
CHARLES GREENWOOD,
IRWIN LOFT, MORTGAGE GUARANTEE TITLE
COMPANY, AND WILLIAM LARSON,
Defendants, Appellees.

APPEALS FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF RHODE ISLAND
[Hon. Raymond Pettine, Senior U.S. District Judge]

Before

Selya, Circuit Judqe,
Coffin, Senior Circuit Judge,
and Lynch. Circuit Judge.

Kevin McBurney for appellant.
Melissa Darrigan for appellee Mortgage Guarantee and
Title Co.
Christopher M. Orton with whom Francis X. Flaherty
was on brief for appellee Charles Greenwood.

July 14, 1997

COFFIN, Senior Circuit Judge. Malek Ahmed ('Ahmed") appeals the district court's grant of summary judgment for the defendants, who he maintains conspired to deprive him of property he owned in Providence, Rhode Island.' Specifically, Ahmed challenges the dismissal of his claims under the Racketeering and Corrupt Organiza- tions Act ('RICO"), arguing that his complaint was sufficiently detailed to establish fraud when given the lenient reading he should have been afforded as a pro se plaintiff. In a related appeal, Ahmed contends that the district court erred in not setting aside the dismissal under Rule 60(b). We affirm both judgments.

I. FACTS

We recite the facts in the light most favorable to the plaintiff, the non-moving party. See McEvoy Travel Bureau, Inc. v. Heritage Travel, Inc., 904 F.2d 786, 787 (1st Cir. 1990). However, we must emphasize that while Ahmed would prefer us to assess this case and the underlying facts on the basis of the Amended Complaint he has submitted on appeal, we are limited in our review to the record below, and specifically to the complaint

---

1. The original named defendants in this case were: Charles Greenwood ("Greenwood"), an attorney who represented Ahmed in the transactions at issue; Irwin Loft ('Loft"), a potential purchaser and agent for and principal of Capital Center Associates Six ("CCAS"), a corporate entity and co-defendant; William T. Larson ("Larson") , another potential purchaser; Mortgage Guarantee & Title Company ("MGT"), and Jon and Carol Rosenblatt ("the Rosenblatts") Ahmed's claim against the Rosenblatts was dismissed separately earlier.

that was filed with the district court. [2] See Fed. R. App. P.10.

The facts of this case concern various transactions relating to property held by Ahmed at 47 Maple Street ("47 Maple") in Providence. Ahmed initially entered into a purchase and sale agreement with one William Larson in October of 1988, contingent upon Larson obtaining financing. Ahmed retained defendant Charles Green- wood to represent him in the transaction, and received a $5,000 deposit from Larson which he gave to Greenwood to hold in escrow. On October 20, 1988, Larson notified Ahmed that he had been unable to obtain financing; Ahmed asserts tnat he then requested Greenwood to return Larson's deposit, but that this was not done until December 20.

On December 16, Ahmed entered into a second purchase and sale agreement for 47 Maple, this time with Irwin Loft/CCAS. [3] Ahmed again was represented by Greenwood, [4] and he received a $25.000 deposit from Loft. On December 19, the first potential purchaser, Larson, recorded his agreement. On December 23, Loft requested that defendant MGT place a lien on Maple Street in order to secure his deposit.

---

2 We therefore consider the amended complaint only in the context of the Rule 60(b) motion.

3. This contract contained an extension of the time for performance to August 1, 1989. Ahmed contends that his signature on this extension was forged.

4. Some time after this meeting. Loft retained Greenwood to represent him in an unrelated eviction proceeding.

On March 8, 1989, shortly before the closing between Ahmed and Loft/CCAS, Loft gave Ahmed an additional $30,000. The closing itself occurred on March 14, but was followed the next day by the filing of a lis pendens by Larson. based on his earlier agreement with Ahmed. This lien was discovered by MGT, which informed Ahmed that the closing with Loft would be voided as a result. Larson then sued Ahmed for specific performance.

On July 12. Ahmed executed in favor of Loft a number of documents denominated "Promissory Note Secured by Mortgage," relating to 47 Maple and several other properties. He maintains that he thought t.these were just receipts for the moneys he had received from.Loft, [5] though Loft contends that the documents were intended to create security for the money he had given to Ahmed. Loft unsuccessfully attempted to foreclose on these notes for non-payment by Ahmed in 1991 and 1992, and then transferred them to Jon and Carol Rosenblatt on April 17, 1993. Ahmed subsequently brought suit on February 17, 1995, alleging that the above incidents were'all part of a scheme concocted by the defendants to defraud him of his interest in 47 Maple and the related properties.

A magistrate judge issued a report and ecommendation that Ahmed's complaint be dismissed, saying that Ahmed had failed to plead predicate acts, pattern, and enterprise, as required for the RICO claim. Judge Pettine subsequently accepted these recommendations, stating in his order that Ahmed had failed to plead sufficient facts to establish instances of mail and wire fraud, a pattern of racketeering activity, or the existence of an enterprise affecting interstate commerce. Judge Pettine further

---

5 On July 12, 1989. Loft gave Ahmed an additional $30,000 bringing the total amount he had paid to $85,000.

found that Ahmed was afforded appropriate leniency as a pro se litigant. Ahmed sought relief under Rule 60(b), claiming the district court erred in dismissing his complaint, but the district court rejected this. Ahmed appeals both the original judgment and the denial of his post-judgment motion.

II. The First Appeal.

Ahmed raises three claims in his challenge to the district court's grant of summary judgment. Our review is plenary. Feinstein v. Resolution Trust Corp., 942 F.2d 34. 34 (lst Cir. 1991) .

A. Dismissal of the RICO claim.

Ahmed argues that the district court wrongly concluded that he failed to plead sufficient facts to demonstrate a RICO violation. We begin by briefly reviewing the well established requirements for such a claim.

A RICO plaintiff must allege a pattern of racketeering activity involving at least two predicate acts, the second of which must occur within 10 years of the first. 18 U.S.C. 1961(5) . Predicate acts under this statute are acts indictable under any one or more of certain specified laws, including the mail and wire fraud statutes. See Feinstein, 942 F.2d at 42; see also McEvoy, 904 F.2d at 788. Furthermore. a RICO plaintiff must allege the existence of an enterprise, which the statute defines as including: "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. S 1961(4). Ahmed's complaint fails to establish any of these three requirements with sufficient detail to survive summary judgment.

Turning first to predicate acts, we previously have noted "[i]t is not enough for a plaintiff to file a RICO action, chant

the statutory mantra, and leave the identification of predicate acts to the time of trial." See Feinstein, 942 F.2d at 42. Ahmed's pleading contains only the bald assertion that the defendants (unspecified) used the U.S. mails to fraudulently convey their interests in Ahmed's properties. that the defendant (again unspecified) used the U.S. Postal Service by mailing
unspecified materials, and that the defendants used wire communications.

Despite well settled law in this circuit that RICO pleading of mail and wire fraud must satisfy the particularity requirements of Rule 9(b), see Feinstein, 942 F.2d at 42; New England Data Services, Inc. v. Becher, 829 F.2d 286, 290 (lst Cir. 1987), and that under 9(b). a pleader must state the time place and content of the alleged mail and wire communications perpetrating that fraud, see Becher, 829 F.2d at 291, Ahmed's complaint supplies no times, places, or contents. The record is
similarly devoid of evidence which would support Ahmed's contentions. He has therefore failed to show the required predicate acts.

Failure to plead predicate acts adequately is enough to sink his RICO claim. We nonetheless briefly consider the other RICO elements. Following the Supreme Court's lead in H.J.. Inc. v.Northwestern Bell Tel. Co., 492 U.S. 229, 238 (1989), we have held that a plaintiff seeking to establish a RICO "pattern" must show that the predicate acts are related and that they amount to or pose the threat of continued criminal activity (the "continuity" require- ment). See Feinstein. 942 F.2d at 44; see also McEvoy, 904 F.2d at 788.

In order to demonstrate relatedness, the predicate acts must have the same or similar purposes, participants, victims, or methods. or otherwise be interrelated by distinguishing characteristics and not be isolated events.

See Feinstein. 942 F.2d at 44; see also Fleet Credit Corp. v. Sion, 893 F.2d 441, 445 (lst Cir. 1990). Ahmed's minimal assertions do not permir us to realistically assess the purposes, participants, or methods of the alleged acts to determine their relatedness.

In supporting the continuity prong of the pattern requirement, a plaintiff must show either that the related predicates "amounted to" continued criminal activity or that there was, even though the predicate acts did not span a significant time, a 'threat' or realistic prospect of continued activity in time yet to come. See Feinstein, 942 F.2d at 45. Here, absent sufficient allegations of both predicate acts and relatedness, the "amounted to" threshold has not been reached. Similarly, the "threat" approach is unavailable; there is no allegation that, after the attempted foreclosure, such conduct was an ongoing entity's way of doing business.

Finally, on the enterprise element, Ahmed fails to allege that the defendants were together part of any legal entity, and again, the complaint's mere allegation that an enterprise existed does nothing to support that claim or demonstrate how the defendants were purportedly associated in fact. We therefore must conclude that Ahmed failed to make his case on this point as well.

Because Ahmed failed to establish any of the three necessary elements of a RICO claim, the district court properiy dismissed his complaint.

B. The Becher second determination.

Ahmed attempts to resuscitate his claim under the "second determination" approach we adopted in Becher, 829 F.2d at 290. We said there that Rule 9(b) has a special gloss in the RICO context in cases where a plaintiff's specific allegations make it likely that a defendant has used interstate mails or wire, and
where this information is in the exclusive control of the

defendant: before granting a motion to dismiss, a district court should make a second determination as to whether further discovery is warranted and, if so, the plaintiff should be provided with the opportunity to amend the complaint after the completion of this discovery. See id. Ahmed contends that the magistrate judge and the district court judge erred in not conducting such a second determination. We disagree.

We must stress again that the application of the Becher second determination is neither automatic, nor of right, for every plaintiff. See Feinstein, 942 F.2d at 44. Furthermore, not every use of the mails or wires in furtherance of an unlawful scheme to deprive another of property constitutes wire or mail fraud. See McEvoy, 904 F.2d at 791. Ahmed failed to supply specific allegations which would indicate that critical information was in the sole possession of the defendants, and hence that further discovery or the opportunity to amend his complaint was warranted.[6] Ahmed therefore was not entitled to a Becher second de.termination.

C. Pro se leniency.

Finally, Ahmed contends that he should have been accorded greater leniency due to his pro se status. Our judicial system zealously guards the attempts of pro se litigants on their own behalf. We are required to construe

---

6 Much of Ahmed's "support" for his contentions of fraud his original complaint consists of conclusory statements without any supporting data. His brief on appeal suffers from a different though related. ailment, in that it attempts to draw causal relationships through positing rhetorical guestions to which it then supplies self-serving answers, again with little or no support from the documents in the record.

liberally a pro se complaint and may affirm its dismissal only if a plaintiff cannot prove any set of facts entitling him or her to relief. See Rockwell v. Cape Cod Hosp., 26 F.3d 254, 255 (lst Cir. 1994). However, pro se status does not insulate a party from complying with proce- dural and substantive law. See Eagle Eye Fishing Corp. v. United States Dep't. of Commerce, 20 F.3d 503. 506 (lst Cir. 1994). The policy behind affording pro se plaintiffs liberal interpretation is that if they present sufficient facts, the court may intuit the correct cause of action, even if it was imperfectly pled. This is distinct from the case at hand, in which the formal elements of the claim were stated without the requisite supporting facts.

Ahmed's pro se status was clearly recognized by both the magistrate judge and district court: the magistrate judge noted in his report and recommendation that Ahmed was proceeding pro se, while Judge Pettine's order specifically recognized that Ahmed was pro se and that his complaint was therefore to be construed liberally.[7] However, Judge Pettine also stated that even under a liberal interpretation of his complaint, Ahmed failed to adequately allege the elements of a RICO violation. We agree.

---

7 We also note that Ahmed was briefly represented by Arthur Chatfield, III, who filed a supplemental objection to Magistrate Judge Lovegreen's report and recom- mendation on October 10, 1995, prior to Judge Pettine's Order adopting the same. Therefore, although we have assessed Ahmed's claim under the liberal standards appropriate to a pro se plaintiff, it appears he was not entirely bereft of benefits of counsel during this process.

III. The Second Appeal: Rule 60(b).

We now turn to Ahmed's claim that the district court erred in dismissing his claim for relief under Rule 60(b) . We begin with a short synopsis of the procedural history of this second part of the appeal.

Ahmed's original appellate brief was filed with this court on June 7, 1996. Before defendants had filed their briefs, Ahmed filed a motion to amend his complaint and filed an amended complaint with the circuit. We denied his motion, and ordered that any request to amend be presented to the district court. Ahmed therefore filed a motion to reopen, reconsider, and rehear in the district court under Rule 60(b). At the district court's request, we remanded to permit the 60(b) motion to go forward,
whilst retaining jurisdiction over the original appeal and staying proceedings on it.

The defendants filed timely objections, and a hearing was held by the magistrate judge, who denied plaintiff's motion on the ground that he had failed to meet 'Rule 60(b)'s criteria. He specifically found that the amended complaint, though longer and more detailed than that originally filed by Ahmed, was in substance the same. He also found that exceptional circumstances were not present in this case, and that, due to the amount of
time that had passed sirice judgment was rendered, it would be prejudicial to the defendants to assume the burden of defending the case at that point. Ahmed objected to this order; Judge Pettine affirmed it. Ahmed then appealed that denial to this circuit, where it was consolidated with his earlier appeal.

Our review of the denial of a motion under Rule 60(b) is for abuse of discretion. See Hoult v. Hoult, 57 F.3d 1, 3 (lst Cir. 1995). Our review is limited to the denial of the 60(b) motion, not the merits of the underlying judgment. See id. We will find an abuse of discretion only when we

are left with a definite and firm conviction that the lower court committed a clear error of judgment in the conclusion it reached when weighing all the relevant factors. See United States v. Boch Oldsmobile, Inc., 909 F.2d 657, 660 (lst Cir. 1990). Such is not the case here.

Ahmed raises claims under both Rule 60(b) (1) and 60(b) (6) and we discuss these separately.

A. Rule 60(6)(1).

Ahmed first contends that the lower courts committed a "mistake" under Rule 60(6)(1) in not according him a second determination under Becher prior to dismissing his complaint under Rule 12 (b) (6) .[8] As discussed above, Ahmed was not entitled to a Becher second determination because he failed to allege specific facts which would require the district court to initiate additional proceedings. However, even if this were not the case. Ahmed's claim on this point would still fail: in this circuit, wrongly deciding a point of law is not a "mistake" as we have defined that term under Rule 60(6)(1). See Hoult, 57 F.3d at 5; see also Silk v. Sandoval, 435 F.2d 1266. 1267-68 (lst Cir. 1971) .

B. Rule 60(b) (6).

Ahmed next claims that he is entitled to relief under

---

8. Rule 60(b)(1) permits a court to relieve a party from a final judgment, order or proceeding for "mistake, inadvertence, surprise. or excusable neglect...."

Rule 60(b)(6), the catchall clause.[9] Rule 60(b)(6) motions should be granted only where exceptional circumstances justifying extraordinary relief exist. See Valley Citizens for a Safe Environment v. Aldridge, 969 F.2d 1315, 1317 (lst Cir. 1992). Under the Federal Rules, district courts have broad discretion to determine whether such circumstances exist. See id. Additionally, a 60(b)(6) movant must make a suitable showing that the movant has a meritorious claim. See Cotto v. United States,
993 F.2d 274, 280 (lst Cir. 1993).

While we have no doubt that Ahmed has experienced a disquieting set of reversals and possible breaches of faith with various parties, he simply has been unable to demonstrate a colorable claim under RICO. There has been no showing, beyond counsel's hyperbolic assertions, that extraordinary circumstances justifying such exceptional relief exist here. In this situation, we are therefore loath to disturb the well reasoned decision of the lower court which had before it all the documents

---

9. Rule 60 (b) (6) provides that the court may relieve a party from a final judgment, order, or proceeding for "any other reason justifying reief from the operation of the judgment."

Since Rule 60(b)(6) is designed as a catchall, a motion under it is appropriate only when none af the first five sections pertain, and section (6) may not be used as means to circumvent rhose five preceding sections. See Simon v. Navon, No. 96-2314, slip op. at 10 (lst Cir. June 2, 1997). Ahmed is therefore analytically inconsistent in seeking relief under both sections (1)
and (6), for if relief is hypothetically appropriate under section (l), then it should not be sought under section (6) as well.

we have now reviewed, as well as the parties and their counsel, and as such was in a superior position to make a determination on this issue.

As the Supreme Court noted in Ackermann v. United States, 340 U.S. 193, 211-12 (1950), in affirming the denial of a 60(b) motion, "[t]here must be an end to litigation someday...." That day has arrived for this particular case. Both judgments of the district court are affirmed.[10]

---

10 MGT maintains in its brief on appeal that Ahmed's RICO claim is barred by the four year statute of limitations for such actions; since we have affirmed the district court's dismissal of this claim on the ground that Ahmed did not sufficiently plead the RICO claim, we do not address the statute of limitations argument.

United States District Court
for the District of Rhode Island

Malek Ahmed,
plaintiff,

v. CA No.: 95-095 P

Jon Rosenblatt, et al

ORDER

The Report and Recommendation of United States Magistrate Judge Robert Lovegreen filed on September 5, 1995 in the above-captioned matter is hereby accepted pursuant to 29 USC Sec. 636 (b)(1).

The Report and Recommendation written by the Magistrte Judge recommended the granting of the defendnts' Motions to Dismiss for Failure to State a Claim pursuant to Fed. R. Civ. P. 12 (b) (6). The plaintiff objects to this Report and Recommendation, arguing that the necessary elements of a civil Racketered Influenced and Corrupt Organixation (RICO) violation can be inferred from his Verified Complaint. As thoroughly discussed in the Repor and Recommendation, the plaintiff's Verified Complaint did not adequately allege the legal elements of a RICO violation required by 18 USC sec. 1962. The plaintiff failed to plead sufficiently specific facts to establish instances of mail and wire fraud, a pattern of racketeering activity, or the existance of an enterprise affecting interstate commerce.

The plaintiff argues that his pleadings were not given the liberal interpretation required for a pro se complainant. The plaintiff cites Mitchell v. Beauboef, 581 F.2d 412 (5th Cir. 1978), cert. denied, 441 US 966 (1979), and Kilgo v. Ricks, 983 F.2d 189 (11th Cir. 1993) to establish the

latitude afforded pro se litigants. It is true that pro se pleadings should be afforded lenient interpretation. Haines v. Kerner, 404 US 519, 520-21 (1972); see also Estelle v. Gamble, 429 US 97, 106 (1976). Hoewever, the First Circuit has explained that, "[e]ven pro se petitioners must plead specific facts backing up their claims." United States v. Michaud, 925 F 2d 37, 41 (1st Cir. 1991).

Even with the most liberal construction of the plaintiff's verified complaint, his allegations do not indicate a "pattern of racketeering activity," whic must encompass a series of related acts amounting to or posing a threat of continued criminal activity, H.J. Inc. v. Northwestern Bell Tel Co., 492 US 229, 240 (1989). In his Supplemental Objection to te Report and Recommendation, the plaintiff argues that mail fraud could be inferred from the transfer and recording of a forged estension of the purchase agrement and from te defendant Greenwood's entry and appearance in District Court. Accepting arguendo that these instances represent the factual predicates for the mail fraud allegations, they do not amount to or pose a threat of continued criminal activity. The plaintiff's allegations are strikingly similar to the facts of Arzuaga-Collazo v. Oriental Fed. Savings Bank, 913 F.2d 5 (1st Cir. 1990). In that case, the First Circuit held that even if a developer fraudulently sellling substandard housing lied on the telephone to plaintiff and committed fraud in bankruptcy court relating to the same matter several months later, the developer had not committed contining criminal activity as required for a RICO violation. Id at 6. Where, as in the instand case, the separate instances of mail or wire fraud are part of a single effort to obtina one piece of property, they are appropriately characterized as separate parts of a siungle criminal episode rather tha continued racketeering activites. Apparel Art Int.l Inc. v. Jocobson, 967 F.2d 720, 723 (1st Cir. 1992); see also Parcoil Corp. v. Nowsco Well Service, 887 F.2d 502

(4th Cir. 1989) (holding that seventee falsified reports sent over a period of four months do not establish continuity). Affording the plaintiff a liberal interp-retation of his Verified Complaint, the plaintiff still has not alleged any factual basis for a pattern of continuing criminal activity. Therefore, the plaintiff's Objections to the Report and Recommendation are without merit.

The defendants have filed several motions to strike the plaintiff's objections as untimely. The Court need not address these motions as the defendants have prevailed on the meris of their Motions to Dismiss.

The Magistrats Judge's recommendation that the defendants' Motions to Dismiss be granted is hereby APPROVED.

SO ORDERED

/s/ Raymond Pettine
Raymolnd J. Pettine
Senior U.S. District Judge

November 15, 1995

Entered as a Order of this Court November 15, 1995

/s/ Celeste-Anne Patnaude
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

MALEK AHMED,
Plaintiff

vs. C.A. No. 95-095P

JON ROSENBLATT, CAROL ROSENBLATT, CHARLES GREENWOOD, IRWIN LOFT, CAPITAL CENTER ASSOCIATES SIX, MORTGAGE GUARANTEE & TITLE COMPANY : AND WILLIAM LARSON,
Defendants

REPORT AND RECOMMENDATION

Robert W. Lovegreen, United States Magistrate Judge

Before the Court are the motions of defendants, Charles Greenwood and Mortgage Guarantee & Title Company, to dismiss this action for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(6)(6), and for failure to plead fraud with particularity as required by Fed. R. Civ. P. 9(b).

Plaintiff alleges violationc of the Racketeer influenced and Corrupt Organizations Act ('RICO'), 18 U.S.C. §1961 et seq, the Federal Civil Rights Acts, 42 U.S.C. §§ 1983, 1985, the Truth in Lending Act, I5 U.S.C. 1601 et seq., and on various state common law grounds. These matters has been referred to me for disposition pursuant to 28 U.S.C. § 636 (b)(l)(B) and Local Rule of Court 32 (c) (1). For the following reasons, I recommend that the defendants' motions to dismiss be granted.

Background

On October l3, 1988, the plaintiff, Malek Ahmed, entered into a purchase and sale agreement ("PSA") with defendant William Larson ("Larson") for the sale of plaintift's property at 47 Maple Street in Providence, Rhode Island which was contingent upon Larson obtaining financing. Plaintiff had hired defandant Charles Greenwood ("Creenwood"), an attotney, to represent him in the sale and to draft the agreement. Larson placed a $5000 deposit on the property which Greenwood held in escrov for the plaintiff. On October 20, 1988, Larson gave plaintiff notice of his inability to obtain financing. Plaintiff then instructed Greenwood to return the deposit immediately, but Greenwood did not attempt to return the deposit at that time.

On December 16, 1988, the plaintiff had entered into a different PSA with defendant lrwin Loft (" Lo ft "), agent or principal for Capital Center Associates Six ("CCAS"), for the same property at 47 Maple Street. Greenwood also drafted this PSA, even though he had yet to attempt to return the deposit to Larson. At that time, Loft placed a $25,000 deposit on the property. According to plaintiff, Loft then instructed defendant Mortgage Guarantee and Title Company ('Mortgage Guarantee") to place a lien against this property regarding this $25,000 deposit. Plaintiff also alleges that on January 11, 1989, Larson had also filed a lien against all of plaintiff's property regarding his $5000 deposit.

Mortgage Guarantee acknowledges that it did record the PSA between plaintiff and CCAS on Decembet 17, 1988. However, Mortgage Guarantee contends its overall involvement was limited to the general functions of a title insurer, and plaintifr concedes that Mortgage Guarantee

performed these functions on behalf of CCAS only, as plaintiff never hired or engagad Mortgage Guarantee's services himself.

. On March 8, 1989, Loft gave plaintiff an additional $30,000 "earnest money" towards the purchase of 47 Maple Street. The closing took place on March 14, 1989. The day after the closing, Larson filed a Lis Pendens against 47 Maple Sfreet. Then, on March 6, 1989, plaintiff was informed by Mortgage Guarantee that the closing would be voided, because the Larson lien created a cloud on the title. Additionally, Mortgage Guarantee indicated that it recorded a second PSA between plaintiff and CCAS on May 25, 1989 at the request of Loft. This PSA and its recordation is not specifically mentioned in plaintiff's complaint. Plaintiff does state that he "discovered that the PSA entered into with CCAS contained a second set of signature indicating that "the parties agreed to extend the time for performance until August 1, 1989," and that he "never signed the PSA a second time." (Verified Compl. pg 42.) However, what, if any, significance thase facts may have has not been explained to the Court.

Larson sued plaintiff on March 18, 1989 for specific performance of the first PSA. Greenwood fired an answer before plaintiff was even informed he was being sued. On July 11, 1989, plaintiff met with both Greenwood and Loft. Both defendants told plaintiff to sign several documents, prepared by Greenwood, which they repressnted as "receipts" for tho deposit money plaintiff had received from Lott and CCAS. CCAS also offered plaintiff an additional $30,000, making the total $85,000, towards the deposit on 47 Maple Street. They also told plaintiff that these "receipts" would be destroyed in two weeks once the matter with Larson was resolved. In reality, these "receipts"'were promissory notes and a mortgase deed on 47 Maple St, and two other properties owned by plaintiff. The notes and

mortgage ran to Loft individually and were to secure the $85,000 deposit.

Loft individually initiated foreclosure proceedings against the properties in 1991, but was unsuccessful for reasons not made clear to the Court. Loft again attempted to foreclose in 1992, but did not advertise properly, so that foreclosure was invalid. On April 17, 1993, Loft transferred the promissory notes and mortgage deed to defendants Jon and Carol Rosenblatt. The Rosenblatts were named as defendants in this action, but the plaintiff's claim against them was dismissed by the Court on April 20, 1995, because the plaintiff did not object to their motion to dismiss. The Rosenblatts have commenced foreclosure proceedings which are scheduled for November 14, 1995.

The plaintiff brought this action pro se and is suing the defendants for violations of: the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq.; the Federal Civil Rights Acts, 42 U.S.C. §§ 1983, 1985; the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 et seq.; and on state common law grounds of "fraud, extortion, embezzlement, forgery, abuse of process, and conspiracy." (Verified Compl. ¶ 3.)

Defendant Greenwood filed his motion to dismiss on April 5, 1995. Plaintiff objected to the motion on April 17, 1995 and filed motions to enlarge the time to submit an opposition memorandum and to continue the hearing on Greenvood's motion to dismiss. Both plaintiff's motions were denied on May 30, 1995. Mortgage Guarantee filed its motion to dismiss on June 8, 1995. Plaintiff objected thereto on June 19, 1995 but filed no memorandum in opposition. Instead, he requested a thirty day extension of time within which to file such a memorandum. On July 12, 1995, he again objected to Mortgage Guarantee's motion and requestsd an additional

sixty day extension. These two requests for additional time, like his previous ones, were based on his continuing contention that he was very close to retaining counsel to handle this action for him. Neither of these requests were acted upon by the Court. Nevertheless, plaintiff has not submitted a memorandum in opposition to either motion to dismiss to date.

Discussion

1. Fed.R.Civ.P. I2 (b) (6) Standard

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal of an action if that action fails to state a claim upon which relief can be granted. ThaeFirst Circuit Court of Appeals has recognized a tension among precedents regarding the particularity of pleading required to overcome a Rule 12(b)(6) motion and has noted that "the degree of specificity with which the operative facts must be stated in thepleadings varies depending on the case's context." Boston & Maine Corp. v. Town of Hampton, 987 F.2d 855, 863 (1st Cir. 1993) (quoting U.S. v. AVX Corp., 962 F.2d 108,115 (1st Cir. 1992).

In deciding a Rule 12(b)(6) motion, "the court must accept the well-pleaded factual averments of the...complaint as true, and construe these facts in the light most flattering tothe (plaintiff's) cause..." Gooley v. Mobil Oil Corp., 851 F.2d 513, 514 (1st Cir. 1988) (quoting Chongris v. Board of Appeals, 811 F.2d 36, 37 (1st Cir.)m cert. denied, 483 U.S. 1021 (1987)). Further "the court must deny a motion to dismiss if the allegations of the complaint permit relief to be granted on any theory, even one not expressly stated therein." O'Neil v. O.L.C.R.I., 750 F. Supp. 551, 553 (D.R.I. 1990). "Nevertheless, minimal requirements are not tantamount to nonexistent requirements." Gooley v. Mobil Oil Corp., 851 F.2d at 514. "[A] plaintiff ... is ... required to

set forth factual allegations, either direct of inferential, respecting each material element necessary to sustain recovery under some actionable legal theory." Id. at 515.

> In connection with run-of-the-mine motions brought under Rule 12(b)(6), a reviweing court is bliged neither to "credit bald assertions, eriphastic circumlocutions, unsubstantiated onclusions or outright vituperation," nor to honor ubjective characterizations, optimistic predictions or problematic suppositions. "[E]mpirically nonverifiable" conclusions, not "logically ompelled, or at least supported by the stated acts," deserve no deference.

U.S. v. AVX Corp., 962 F.2d at 115 (citations omitted). "It is only when such conclusion [sic] are logically compelled, or at least supported, by the stated facts, that is, when the suggested inference rises to what experience indicates is an acceptable level of probability, that 'conclusions' become 'facts' for pleading purposes." The Dartmouth Review v. Dartmouth College, 889 F.2d 13, 16 (lst cir. 1989).

I

II. TRE RICO CLAIM

The defendants' motions to dismiss the plaintiff's RICO claim should be granted. The defendants argue that even if his factual allegations are taken as true, the plaintiff fails to state viable claims under RICO, 18 U.S.C. §O 1961 et seq. Plaintiff alleges that defendants violated RICO, because they "conspired" with one another as a part of a "scheme" to defraud plaintiff. (verified Compl., Count II, ¶ 61.) Title l8 U.S.C. § 1962 (c) p~ovides:

> it shall be unlawful for any person employed by or associated with any enterprise engaged in, or the

activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . .

Section 1962(d) serves to make conspiracies to violate section 1962(c) unlawful. Feinstein v. Resolution Trust Corp., 941 F.2d 34, 41 (lst Cir. 1991). To state a RICO conspiracy claim, a plaintiff must allege that each defendant agreed to commit or committed two or more predicate acts, constituting a "pattern" of "racketeering activity," and the existence of an "enterprise" in which each defendant knowingly joined. Id. at 41-42; see Browning Ave. Realty Corp. v. Rosenshein, 774 F. Supp. 129, lj6 (S.D.N.Y. 1991).

A. Failure to Plead Predicate Acts

The plaintiff fails to allege that the defendants committed two or more predicate acts in violation of the RICO statute. Title 18 U.S.C. § 1961(5) states that a "pattern of racketeering activity requires at least two acts of racketeering activity . . " "Racketeering activity," as defined in § 1961(1)(B), includes any act indictable under one of numerous federal crininal provisions, including mail or wire fraud. 18 U.S.C. § 1961(1)(B); see E.G. Fleet Credit Corp. v. Sion, 893 F.2d 441, 444 (lst cir. 1990). Therefore, the predicate acts must consist of at least two acts of mail fraud or other statutorily defined prcdicate act as listed in § 1961(1). Sion 893 F.2d at 444.

It is settled law in the First Circuit that Fed. R. Civ. P. 9(b) extends to pleading predicate acts of mail and wire fraud under RICO. Feinstein, 942 F.Sd at 42 (citing New England Data Services. Inc. v. Becher, 829 F.Zd 286, 290 (lst Cir. 1987)). Under Rule 9(b), the pleader is "required to

go beyond a showing of fraud and state the time, place and content of the alleged mail or wire communications perpetrating that fraud." Becher, 829 F.2d at 291.

The elements of mail fraud are (1) the existence of a scheme to defraud and (2). the knowing use of the interstate mails in furtherance of the fraud. Center Cadillae v. Bank Leumi Trust Co., 808 F. Supp. 213, 227 (S.D.N.Y. 1992). Wire fraud requires the additional element of the communication crossing state lines. Id. The RICO mail fraud requirement may ba fulfilledby acts of innocent or routine mailings which are incidental to an essential part of the fraudulent scheme or a step in the plot. Schmuck v. United States, 489 U.S. 705, 710-711 (1989), reh'g denied, 490 U.S. 1076 (1989). Furthermore, plaintiff need not demonstrate that the defendants personally mailed the documents: it is enough to show that the defendants caused the mailings to occur or that the use of the mails was foreseeable. Center Cadillac, 808 F. Supp. at 228; see also Porcaro v. U.S., 789 F.2d 73 (lst cir. 1986) (stating that a letter sent by one of the allegad victims could serve as a predicate predicate act for a mail fraud count where the defendant stood to gain from further dealings stemming from the letter).

Plaintiff has only generally alleged mail and wire fraud without alleging any specific acts of mailing or interstate wire communication. Conclusory allegations are insufficient to satisfy the particularity requirement of Rule 9(b). Rosenshein, 774 F.Supp. at 138. Furthermore, plaintiff fails to establish any communications crossing state lines. "It is not enough to file a RICO claim, chant the statutory mantra, and leave the identification of the predicate acts to the time of trial." Feinstein, 942 F.2d at 41; see Becher, 829 F.2d at 292. Thus, the complaint does not fulfill the

particularity standard required by Rule 9(b) when pleading fraud; accordingly, it should be dismissed.

B Failure to Establish a Pattern of Racketeering Activity

Establishing a pattern is essential, because the RICO statute is aimed at long term criminal conduct. Feinstein, 942 F.2d at 45-46. Its target is criminal activity which, because of its organization, duration and objective, poses a threat of a series of injuries over a significant period of time. Sheridan v. Weinberger, 767 F. Supp. 92, 93 (M.D. Pa.1991). The allegations of two or more acts of mail fraud "is necessary but not sufficient to establish a pattern of racketeering acfivity." Sion, 893 F.2d at 444. In order to establioh a pattarn under RICO, plaintiff must show not only the existence of two or more predicate acts, but also that the acts are related and amount to, or pose a threat of, continued criminal activity. H.J. Inc. v. Northwestern Bell Tel. Co, 492 U.S. 229, 240 (1989).

The relatedness test requires a showing that the predicates "have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing character- istics and are not isolated events." Northwestern Bell, 492 U.S. at 240. A fact-specific allegation of a single com- mon scheme can be used to satisfy this requirement. Feinstein, 942 F.2d at 44: see also Sion, 893 F.2d at 445. Here, the verified complaint states that the defendants acted with a common purpose in that they "conspired with one another to deprive [plaintiff] of his property . . . " (Verified Compl., Count III, ¶ 70.) However, as found above, it provides no fact specific allegations as to what predicate acts occurred and when. Therefore, plaintiff's conslusory allegation of a common purpose is insufficient to satisfy the relatedness test.

The continuity requisite for establishing a pattern under RICO has also not been fultilled hers. In order to establish continuity, a plaintiff must demonstrate that the related predicate acts "amount to or pose a threat of continued criminal activity." Sion, 893 F.2d at 446 (quoting Northwestern Bell, 492 U.S. at 239). The Supreme court's dscision in Northwestern Bell set out two methods for determining if the set of racketeering acts has achieved the continuity necessary to establish a RICO pattern. see Northwestern Bell, 492 U.S. at 238; Feinstein, 942 F.2d at 45.

> Under the "amount[ing] to" or closed-ended approach, a party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time. Predicates extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement.

Northwestern Bell 492 U.S. at 242.

The First Circuit has also recognized that "[H]ad the number of acts alleged by [plaintiff] been few or the period of time short, the predicate acts would not have amounted to continued criminal activity." Sion, 893 F.2d at 447. The Court has also noted that too few acts would suggest that there was only "sporadic activity," Id. (quoting Northwestern Bell, 492 U.S. at 242), and that too short a period of time would suggest that the defen- dants were not engaged in "long-term criminal conduct," id. (quoting Northwestern Bell, 492 U.S. at 242). Here, the allegations of the requisite acts are too vague to determine the number of acts or the time frame in which these occurred. Therefore, plaintiff has not established the requisite continuity under the closed-ended approach.

Under the second method, the open-ended approach, the acts pose a continued threat when they constitute "past conduct that by its nature projects into the future vith a threat of repetition." Id. at 447 (quoting Northwestern Bell, 492 U.S. at 241). One way to establish continuity under this approach is by showing the acts are a regular way of conducting the 'defendant's ongoing business. Northwestern Bell, 492 U.S. at 243; Sion, 893 F.2d at 447. The verified complaint again chants the statutory mantra, but it does not allege any details as to what acts occurred, when these acts took place or how they poss a threat of repetition. Therefore, under both prongs of the continuity analysis, the complaint fails to plead adequately a pattern of racketeer- ing activity and should be dismissed.

C. The Enterprise Requirement

An "enterprise" under the RICO statute is defined as "any individual, partnership, corporation, aesociation, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). See Center Cadillac, 808 F. Supp. at 234. A plaintiff must allege that defendants were associated together and functioned as a "continuing unit. " Rosenshein, 774 F. Supp. at 144; Center Cadillac 808 F. Supp. at 235. The verified complaint merely states that there was an enterprise, without explaining how, where, or in what capacity defendants functioned as a unit. Plaintiff fails to allege adequately the existence of an enterprise, and his RICO claim should therefore be dismissed on this ground also.

II. The Civil Rights Claims

The plafntiff alleges that the defendants violatcd hio civil tights by depriving him of his property without due process

bf law in violation of the Fourteenth Amendment as proscribed in 42 U.S.C. §§ 1983 and 1985. In order to state a claim upon which relief can be granted under 42 U.S.C. § 1983, a plaintiff must allege that defendant acted under color of state law and deprived the plaintiff of rights, privileges or immunities secured to him by the Constitution. Martinez v. California, 444 U.S. 277 (1980). The Fourteenth Amendment only affords protection when state action is involved. Paul v. Davis, 424 U.S. 693 (1976), reh'g. denied, 425 U.S. 985 (1976); Beitzell v. Jeffrey, 643 F.2d 870 (lst Cir. 1981). Plaintiff fails to allege that defendant acted under color of state law, and therefore, the verified complaint should be dismissed.

Plaintiff's claim under 42 U.S.C. § 1985 also fails to state a claim upon which relief can be granted. Plaintiff alleges that "Greenwood prepared the documents [plaintiff] signed . . . in collusion with Loft." (Verified Compl., Count 1, ¶ 35.) That claim can only be read as alleging a violation of 42 U.S.C. § 1985(3). That section reads:

> If two or more persons . . . conspire for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws . . . whereby another is injured in his person or property . . . the party so injured may have an action for the rccovery or damages...

42 U.S.C. § 1985(3)

Section 1985(3) does not apply to all tortious conspiracies, rather it applies to conspiracies motivated by some racial or otherwise class-based discrimination. Tiltan v. Richardsan, 6 F.3d 683, 686 (10th cir. 1993), cert. denied, _____ U.S.____ , 114 S. Ct. 925 (1994). The

complaint contains no allegations that the plaintiff was a member of such a class or race, nor that he was discriminated against because of his membership therein.

Furthermore, § 1985(3) only applies to rights protected against private, as well as official, encroachment, and the Supreme Court limited those to the Thirteenth Amendment right to be free from involuntary servitude and in the same Thirteenth Amendment context, the right of interstate travel. Tilton 6 F.3d at 686 (citing Bray v. Alexandria Women's Health Clinic, ___ U.S.___, 113 S. Ct. 753, 763 (1993)) Here, plaintiff has only alleged a violation of Fourteenth Ammendment rights. Thus, he fails to state a claim under § 1985(3)

IV. The Truth in Lendincr Act Claims

The plaintiff alleges the defendants violated 15 U.S.C.§ 1601, et seq., the Truth in Lending Act. However, the statute of limitations under the relevant sections of TILA is one year for affirmative actions seeking monetary damages such as the present one. 15 U.S.C. § 1640(e). The plaintiff signed the alleged false
"receipts" on July 12, 1989. During 1991, the plaintiff discovered these "receipts" were actually promisory notes and a mortgage deed on his properties. (Verified Compl., Count I, ¶ 40.) Whether the cause of action accrued on the date whan plaintiff signad these documents or when he discovered them to be false, the action is untimely. Thus, plaintiff's TILA claims arc barred by the applicable one-year statute of limitations.

V. The Remaining State Law Claim

Lastly, since the dismissal of plaintiff's federal cause of

action will dispense with any federal question jurisdiction this Court may have had, the pendant state-law claims alleged by plaintiff should also be dismissed without prejudice. Feinstein, 942 F.2d at 47 (citing United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966)).

Conclusion

Based on the foregoing analysis, I recommend the defendants' motions to dismiss be granted. Any objection to this Report and Recommendation must be specific and be filed with the Clerk of the Court within ten (lO) days of its recsipt. Rule 32, Local Rules of Court; Fed. R. Civ. P. 72(b). Failure to file specific objections in a timely manner constitutes a waiver of the right to review by the district court. United States v. Valencia-Copete, 792 F.2d 4 (lst Cir. 1986); Park Motor Mart. Inc. v. Ford Motor Co., 616 F.2d 603 (1st Cir. 1980).

/s/ Robert W. Lovegreen
Robert W. Lovegreen
United States Magistrate Judge
September 5, 1995

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

MALEK AHMED,
Plaintiff,

VS. C.A. NO. 95-095 P

JON ROSENBLATT; CAROL ROSENBLATT; CHARLES GREENWOOD; IRWIN LOFT; CAPITAL CENTER ASSOCIATES SIX; MORTGAGE GUARANTEE & TITLE COMPANY; and WILLIAM LARSON,
Defendants.

VERIFIED COMPLAINT

Malek Ahmed ("Ahmed") for his Complaint against Defendants, states as follows:

PREDICATE

1. This Complaint alleges, inter alia, violations under 18 U.S.C. Section 1961, et seq., The Racketeer Influenced and Corrupt Organizations Act ("RICO)" and is brought by Ahmed in connection with a scheme devised, conducted, and/or participated in by Defendants through a pattern of racketeering activity, and to conspire to do so, and to wrongfully and illegally obtain interests in property belonging to Ahmed, through fraud, extortion, forgery and negligent misrepresentations.

2. This Complaint also alleges, inter alia, violations

of 42 U.S.C. Sections 1983 and 1985, and 15 U.S.C. Section 1601, et seq., The Consumer Credit Cost Disclosure Act.

3. This Complaint also alleges, inter alia, violations of Federal and State laws for fraud, extortion, embezzlement, forgery, abuse of process, and conspiracy, as well as for violations of rules of professional conduct and violations of R.I.G.L. Section 19-25.2-2.

4. The relief sought includes actual damages, punitive damages and treble damages arising from the scheme to defraud set forth herein, restrictions on future conduct, costs of investigation and suit, interest and attorney's fees.

SUBJECT MATTTER JURISDICTION

5. This Court has subject matter jurisdiction over the RICO claims for relief under 18 U.S.C. Section 1964 and over the Civil Rights violations claims under 28 U.S.C. Section 1343, and over the Consumer Credit claims under 15 U.S.C. Section 1601, et seq., and over the Federal and State criminal law violations under this Court pendent jurisdiction.

PERSONAL JURISDICTION AND VENUE

6. Personal jurisdiction and venue are predicated upon 18 U.S.C. Section 1965(a) and (b) and 28 U.S.C. Section 1391(b) and (d) since most acts and occurrences in furtherance of the claims alleged herein arose in the District of Rhode Island, and because the ends of justice require that the Defendants be brought before this court.

PARTIES/PARTICIPANTS

7. Plaintiff Ahmed is a United States citizen and resides in Providence, Rhode Island.

8. Defendants Jon and Nancy Rosenblatt ("Rosenblatts"), William Larson ("Larson"), Irwin Loft ("Loft"), and Charles Greenwood ("Greenwood"), are residents of Rhode Island. Capital Center Associates Six ("CCAS") is a general partnership whose principal place of business is in Rhode Island.

9. Defendant Mortgage Guarantee and Title Company, based upon information and belief, is a California Corporation.

COUNT I

(Fraudulent Conveyances, Misrepresentation, Fraud)

10. In 1988, Ahmed owned certain properties located at 38, 42 and 47 Maple Street, Providence, RI.

11. On October 13, 1988, Ahmed and Larson entered into a Purchase and Sales Agreement ("PSA") for 47 Maple Street.

12. Ahmed was represented by Greenwood.

13. Larson paid a $5,000 deposit on the purchase directly to Greenwood.

14. On October 20, 1988, Larson notified Ahmed that he was unable to obtain financing and the agreement was null and void.

15. Ahmed instructed Greenwood to return Larson's $5,000 deposit.

16. Greenwood failed to prepare or obtain a release from the Larson Agreement.

17. Greenwood advised Ahmed that he was free to sell the property to any new buyer.

18. Greenwood, unknown to Ahmed at the time, kept Larson's $5,000 deposit.

19. On December 16, 1988, Ahmed Capital Center Associates Six ("CCAS") entered into a Purchase and Sales Agreement for 47 Maple Street.

20. Ahmed was represented by Greenwood.

21. On December 19, 1988, Larson, nevertheless, recorded his PSA with the City of Providence.

22. On December 16, 1988, CCAS gave Ahmed a $25, 000 "non-refundable" deposit towards the purchase of 47 Maple Street.

23. On December 16, 1988, Ahmed and CCAS entered into a Real Estate Purchase and Sales Agreement and Occupancy Agreement ("PSOA") giving CCAS pllrchase options on 2 vacant lots and private dwelling on Maple Street.

24. On December 27, 1988, Loft, an agent or principal for CCAS, requested the Mortgage Guarantee and Title Company ("MG&T") to place a lien against 47 Maple Street to "secure the $25,000 'non-refundable' deposit".

25. On March 8, 1989, CCAS gave Ahmed $30,00 "earnest" money towards the purchase of 47 M~ple Street.

26. On March 14, 1989, the sale of 47 Maple Street to CCAS was closed.

27. On March 15, 1989 Larson filed a Lis Pendens against 47 Maple Street with the City of Providence.

28. On March 16, 1989, Ahmed went to MGLT to pick up check for the sale of 47 Maple Street but, rather, Ahmed was informed of the Larson lien and was told that the sale would, therefore, be voided.

29. On March 18, 1989, Larson sued Ahmed for specific performance cancerning the October 16, 1988 PSA with Ahmed.

30. Greenwood, without first informing Ahmed of the existence of this lawsuit, filed an Answer with the court.

31. Ahmed would never have been sued but for

Greenwood's failure to return the deposit as instructed and obtain a release of the property, as was his duty to Ahmed.

32. On July 12, 1989, Greenwood and Loft requested Ahmed sign "receipts for the deposits paid to Ahmed by CCAS".

33. In reality, and unknown at the time to Ahmed, Greenwood actually had Ahmed sign 3 promissory notes and a mortgage deed, and not "receipts" as he claimed to Ahmed.

34. Greenwood and Loft never made it clear to Ahmed that it was Loft, personally, not CCAS that had the real interest in not only 47 Maple Street but also in Ahmed's other properties on Maple Street.

35. Greenwood prepared the documents Ahmed signed on July 12, 1989 in collusion with Loft.

36. Greenwood, who was "rushed for time" never did make good on his promise to Ahmed to explain the documents he had just signed, or, to provide Ahmed with copies of them.

37. In fact, Greenwood and Loft assured Ahmed that the documents would "be destroyed in 2 weeks".

38. Upon signing the documents purported to be receipts, CCAS offered Ahmed an additional $30,000 "earnest" money towards the purchase of 47 Maple Street, making a total of $85,000 now paid to Ahmed as deposits towards the purchase of 47 Maple Street.

39. In 1990-91 CCAS withdrew its offer to purchase 47 Maple Street.

40. In, 1991, Ahmed learned that the documents Greenwood and Loft represented as receipts for deposits, were in fact promissory notes converting the so-called deposit and "earnest" money into blanket mortgages for not only 47 Maple Street, but also for 38 Maple Street and 42 M~ple Street for the benefit of Loft individually.

41. Further, Ahmed learned that the promissory notes had varying terms, effective dates and ambiguous due dates and that Loft, as an individual, was made the payee, not CCAS.

42. Ahmed also discovered that the PSA entered into with CCAS contained a second set of signatures indicating that "the parties agree to extend the time for performance until August 1, 1989." Ahmed will testify that he never signed the PSA a second time.

43. Loft and CCAS failed to comply with the requirements of the Federal Truth in Lending Act and, in addition, Loft is in direct violation of R.I.G.L. Section 19-25.2-2 for making or negotiating more than 6 second mortgages in a calendar year without the required license ta do so.

44. Loft caused the forged and altered PSA to be recorded and filed through either Greenwood himself or the MG&T Company with the City of Providence. The original PSA has never been filed or recorded.

45. Greenwood and Loft fraudulently obtained an interest in Ahmed's property and failed to disclose their interest to Ahmed.

46. In 1991, Loft, individually, initiated foreclosure proceedings against Ahmed's 38 Maple Street, 42 Maple Street and 47 Maple Street properties, on unmatured Notes and, as a result Ahmed was forced to seek protection in the Bankruptcy Court.

47. Greenwood, while acting as Ahmed's attorney, was also acting as Loft's attorney and representing both parties' interests at the same time.

, 48. In 1990, Greenwood instructed Ahmed that Ahmed had to pay Loft $20,000 on the promissory notes.

49. Greenwood, after learning that CCAS was no longer interested in purchasing 47 Maple Street, attempted to enforce the October 13, 1988 Larson PSA.

50. On October 23, 1990, Greenwood corresponded with Larson offering Larson 47 Maple Street for $120,000.

51. Greenwood knew at the time that Loft was still very interested in obtaining all Ahmed's Maple Street properties for Loft's "shopping mall" project.

52. In 1992, Loft, as an individual, attempted once again to foreclose (without success) on Ahmed's properties without advertising his attempted foreclosure as required by law.

53. On April 17, 1993, Loft, individually, negotiated and then transferred the 3 fraudulently obtained promissory notes and the mortgage to Defendants Jon and Carol Rosenblatt even though the mortgage deed does not state that it is subject to any encumbrances.

54. On May 11, 1993, Loft, as an agent or principal for CCAS, discharged the extension on the forged PSA without Ahmed's knowledge or consent.

55. These fraudulently obtained promissory notes do not contain a 3 day right of recession required by law, are backdated, and there has been no consideration for them.

56. The Rosenblatts now, through their counsel, are attempting and, in fact, initiating foreclosure proceedings against 42 Maple Street, 47 Maple Street, and are threatening 38 Maple Street which, is Ahmed's residence.

57. The Defendants have committed fraud by obtaining an interest in Ahmed's property without disclosing their financial interest in the property.

58. Defendants made affirmative misrepresentations to an adversary, conspired with one another and took steps to conceal their fraud and forgery.

59. Defendants violated legal and ethical obligations.

COUNT II

(Racketeer Influenced and Corrupt Organizations)

60. Ahmed here repeats the allegations of Paragraphs 1-59 of this Complaint.

61. The Defendants conspired with one another to defraud Ahmed. As part of the scheme to defraud, the Defendants illegally obtained an interest in Ahmed's properties without disclosing to Ahmed their financial interests in the property; made and obtained fraudulent conveyances; made and conspired to make affirmative misrepresentations to an adversary and to Ahmed; conspired with their clients and took steps to conceal their own and their clients' fraud; and violated legal and ethical obligations. The multifarious racketeering activities through which these objectives were carried out consisted of a pattern of individual transactions and group of transactions.

62. In carrying out the scheme to defraud, Defendants engaged, inter alia, in conduct in violation of Federal Laws, to wit: use of the United States Mail Service to fraudulently convey their interests in Ahmed's properties, which constitutes mail fraud in violation of 18 U.S.C. Section 1341.

SUMMARY

63. The activities of Defendants in the formation and execution of the scheme to defraud had and continues to have a pervasive and debilitating impact on Ahmed's business, reputation and day-to-day life. Ahmed's time continues to be diverted from normal business activities. As a result, in addition to the loss of potential sales of his properties and the thousands of dollars wasted on legal fees, Ahmed is forced to spend substantial amounts of time and money protecting his reputation and his family.

64. In connection with the activities giving rise to

this action, Defendants acted with malice, insult, intent and knowledge, and with a wanton and reckless disregard of the rights and reputation of Ahmed.

65. In connection with the activities giving rise to this action, Defendants conspired with each other, and with others unknown, to engage in various activities set forth herein and aided and abetted one another in these activities, all as proscribed and prohibited by RICO under 18 U.S.C. Section 1962.

66. In furtherance of and for the purpose of executing the scheme and artifice to defraud, Defendants on numerous occasions used and caused to be used mail depositories of the United States postal Service by both placing and causing to be placed mailable matter in said depositories and by removing and causing to be removed mailable matter from said depositories, each such use of the mails in connection with the scheme and artifice to defraud and to obtain money by false pretenses, constituting the offense of mail fraud as proscribed and prohibited by the terms and provisions of 18 U.S.C. Section 1341.

67. In the furtherance of and for the purpose of executing the scheme and artifice to defraud, defendants on numerous occasions used and caused to be used wire communications in interstate and commerce, by both making and causihg to be made telephone calls and other wire communications, as proscribed and prohibited by the terms and provisions of 18 U.S.C. Section 1343.

COUNT III
(Civil Rights Violations)

68. Ahmed here repeats the allegations of paragraphs 1-67 of the Complaint.

69. Defendants are attempting, and have attempted, to deprive Ahmed of his property without due process of law

in violation of the Fourteenth Amendment of the United States Constitution.

70. Defendants conspired with one another to deprive Ahmed of his property without due process of law in violation of the Fourteenth Amendment of the United States Constitution.

71. Defendants acted with malice, intent and knowledge, and with a wanton and reckless disregard of the rights of Ahmed .

FIRST CLAIM FOR RELIEF
(Fraudulent Conveyances, Misrepresentation and Fraud)

72. Ahmed here repeats the allegations of paragraphs 1-71 of the Complaint.

73. Defendants have committed fraud, made affirmative misrepresentations, fraudulently conveyed Ahmed's properties, violated the Truth in Lending Act and R.I.G.L. Section 19-25.2-2, have attempted to foreclose on his property and, in fact, Defendants Rosenblatts are currently foreclosing on 42 Maple Street and 47 Maple Street and are threatening Ahmed's residence of 47 Maple Street, and will continue to do so until enjoined by this Court.

74. By reason of the foregoing violations which may hereafter become known to the Plaintiff committed or to be committed by Defendants, Ahmed was injured in an as yet undetermined amount, believed to be not less than approximately Five Hundred Thousand ($500,000.00) Dollars which constitutes damages within the meaning of 35 U.S.C. Section 284.

SECOND CLAIM FOR RELIEF
(Racketeer Influenced and Corrupt Organizations)

75. Plaintiff Ahmed is a "person" within the meaning of 18 U.S.C. Section 1961(~) and is entitled to relief under the provisions of 18 U.S.C. Section 1964(1)

76. Defendants are "enterprises", individually and jointly, within the meaning of 18 U.S.C. Section 1961(4).

77. That the Defendants were employed by or associated with an enterprise and did conduct or participate, directly or indirectly, in the conduct of the a~fairs of Defendants through a pattern of racketeering activity within the meaning of 18 U.S.C. Sections 1961(1), 1961(5) and 1962(c), to wit:

(a) multiple instances of mail fraud in violation of 18 U.S.C. Section l341; and

(b) multiple instances of wire fraud in violation of 18 U.S.C. Section 1343.

78. By reason of the foregoing violations and other violations which may hereafter become known to Plaintiff committed or to be committed by Defendants, Ahmed was injured in an as yet undetermined amount, believed to be not less than approximately Five Hundred Thousand ($500,000.00) Dollars within the meaning of 18 U.S.C. Section 1964(c).

THIRD CLAIM FOR RELIEF

(Civil Rights Violations)

79. Ahmed here repeats the allegations of paragraphs 1 - 78 of the Complaint.

80. Defendants have attempted, are attempting, and have conspired, to deprive Ahmed of his property without due process of law as proscribed and prohibited by the terms and provisions of 42 U.S.C. Sections 1983 and 1985.

81. By reason of the foregoing violations which may hereafter become known to the Plaintiff committed or to be committed by Defendants, Ahmed was injured in an as yet undetermined amount, believed to be not less

that approximately Five Hundred Thousand ($500,000.00) Dollars.

PRAYER FOR RELIEF

WHEREFORE, Ahmed prays:

That judgment be entered against Defendants, each of them jointly and severally:

(a) in an undetermined amount not less than Five Hundred Thousand ($500,000.00) Dollars upon the First Claim for Relief. Ahmed makes a separate demand for punitive damages.

(b) in an undetermined amount not less than Five Hundred Thousand ($500,000.00) Dollars upon the Second Claim for Relief, for violation of 18 U.S.C. Section 1962(c), the sum duly trebled in accordance with 18 U.S.C. Section 1964(c).

(c) in an undetermined amount not less than Five Hundred Thousand ($500,000.00) Dollars upon the Third Claim for Relief. Ahmed makes a separate demand for punitive damages.

(d) for the costs of suit.

(e) in addition, Ahmed prays for equitable relief against Defendants in the form of such injunctive and related relief as might be appropriate in accordance with 15 U.S.C. Sections 283, 284 and 289 and 18 U.S.C. Section 1964(a) including:

(1) to stop the scheduled foreclosure on 38, 42 and 47 Maple Street by the Rosenblatts; and

(2) reasonable restrictions on the future activities of Defendants; and

(3) an equitable accounting for all benefits, consideration and monies received directly or indirectly or underlying Defendants' activities; and

(4) the imposition and execution of equitable liens.

(5) for such other damages, relief and pre- and post-judgment interest as the Court may deem just and proper.

Plaintiff demands a jury trial on all claims.

/s/ Malek Ahmed
Malek Ahmed, Pro Se
38 Maple Street
Providence, RI 02903
(401) 274-5493

Pauline Patchis
Court Qualified
Examiner of Questioned Documents

67 South Fair Street
Warwick, RI 02888

(401) 467-5641
(203) 721-0207
(603) 225-8008

Date: September 12th, 1995
Re: Signature Examination

Questioned Documets:
Signature in question, MALEK AHMED, as seen on a copy of a 5-page Real Estate Purchase & Sale Agreement, bearing a date of on/about August 1, 1989; marked "Plaintiff's 13, Book 2039 Page 141"

Known Signatures Attributed to Malek Ahmed:
K-1: Signature/Endorsement on reverse side of Check #1319, o/a 11/10/87
K-2: Exhibit L-1 / Real Estate Purchase and Sales Agreement, 10/13/88
K-3: Signature as Seller on 12/16/88 Real Estate P & S Agreement, 12/16/88
K-4: Plaintiff's 12,12/6/88, Real Estate P&S Agree.

Objective:
To determine if the "questioned" and "known" MALEK AHMED signatures were written by the same persons.

Results of Findings:
A number of UNCOMMON writing characteristics is present between the said "questioned" vs. "known" MALEK AHMED signatures: that is QS vs, K-1 to K-6,

inclusive. These characteristics are seen as significant dissimilarities which cannot be attributed to natural variation in the part of the same writer. Although the quality of the 5-page "questioned" document is rather poor, the following opinion of authenticity of the "wuestioned" signature can be made, based on the weight and number of the dissimilarities between the said "questioned" vs. "known" signatures:

Opinion:
Based on a reasonable degree of scientific certainty, it is the opinion of tis document examiner that the "questioned" MALEK AHMED signature, seen on Plaintiff's 13, Page 5 of Book 2039/Page 141, wan not written by the same person whose "known" signatures are attributed to Malek Ahmed; that is, QS vs. K-1 to K-6, inclusive; and in accordance with all documents submitted and descrived herein.
This document examiner is prepared to present the actual findings ina court of law or other judicial body, should expert witness testimony be required in this matter. Thank you for submitting this case and for your confidence.

Retainer Fee Rec'd: $____

Total Balance Due: $____

/s/ Pauline Patchis
Certified Document
Examiner

United States District Court for the District of Rhode Island

Malek Ahmed,
Plaintiff

vs.

C.A. No.: 95-095P

Charles Greenwood, Irwin Loft,
Capital Center Associates Six,
Jon Rosenblatt, Carol Rosenblatt,
Mortgage Guarantee & Title Company,
and William Larson,
Defendants

Amended Complaint

Now comes the plaintiff in the above captioned matter before the Honorable Court with his Amended Complaint, by and through his attorney, Kevin McBurney, against the above named defendants.

1. The plaintiff re-alleges, makes reference to, and incorporates all paragraphs and sections of his original complaint, as though fully set forth herein.

JURISDICTION

2. This Court has jurisdiction over claims for relief under 18 U.S.C. § 1964(a) (Equity) and 1964(c) (Right to Sue and Treble Damages); 18 U.S.C. § 1961 et seq. **(RICO)**; 28 U.S.C. § 133(a) (Federal Question).

3. Personal jurisdiction and venue are predicated upon 18 U.S.C., et seq., and 28 U.S.C. § 139(b) and (d) since the defendants are either, residents of the State of Rhode Island, or have an agent or agents within and have transactional affairs within the State of Rhode Island, and the acts and occurrences alleged herein occurred within the State of Rhode Island. Furthermore the ends of justice require that all parties residing in any other district be brought before the court.

RELEVANT TIMES

4. The relevant times to this Amended Complaint are from on or about October-1986 through the filing of this action.

PARTIES

5. Plaintiff, Malek Ahmed, is a naturalized citizen of the United States of America and is a resident of the State of Rhode Island, with a principle residence at 38 Maple Street, Providence.

6. Defendant Jon Rosenblatt is a resident of Rhode Island, with a principle residence at 114 Benefit Street, Providence.

7. Defendant Carol Rosenblatt is a resident of Rhode Island, with a principle residence of 114 Benefit Street, Providence.

8. Defendants Jon and Carol Rosenblatt, hereinafter referred to as "the Rosenblatts", are assignees (though not a holders in due course as defined by the Uniform Commercial Code) of all rights and responsibilities of fellow defendant Irwin Loft regarding three below referenced promissory notes secured by mortgage deed, hereinafter referred to as "notes", which were acquired by Loft through fraudulent means as set forth in this complaint, and are, thereby, liable for all said actions of defendant Loft regarding said notes.

9. Defendants Jon and Carol Rosenblatt used undue pressure to place the plaintiff under duress and forced him to dismiss them as defendants in this action "with prejudice".

10. Defendant Charles Greenwood, hereinafter referred to as "Greenwood", is an attorney authorized to practice in the State of Rhode Island, who maintains an office at 333 Westminster Street, Providence.

11. Greenwood was, at all times relevant to this complaint up through September 1991, attorney in fact for the plaintiff, Malek Ahmed.

12. Defendant Irwin Loft, hereinafter referred to as "Loft", is, to the best of plaintiff's knowledge, information, or belief, a resident of Rhode Island whose address is not known to the plaintiff.

13. Defendant Irwin Loft has been dismissed, without prejudice, by the court as a defendant in this matter as a result of the plaintiff's inability to properly serve defendant Loft.

14. The plaintiff intends to ascertain the whereabouts of Loft so as to properly serve him.

15. Defendant Capital Center Associates Six, hereinafter referred to as CCAS, is registered as a partnership with the City of Providence.

16. CCAS has, to the best of plaintiff's knowledge, information, or belief, neither a registration nor designation number from either the Dept. of Business Regulation or the Corporations Division of the Secretary of State's office in the State of Rhode Island.

17. CCAS, to the best of plaintiff's knowledge, information, or belief, has no known business address and no known disclosed business purpose.

18. Defendant William T. Larson, hereinafter referred to as "Larson", is, to the best of plaintiff's knowledge, information, or belief, a resident of Rhode Island whose address is not known to the plaintiff.

19. Defendant Mortgage Guarantee & Title Company, hereinafter referred to as "MGT", is , to the best of

plaintiff's knowledge, information, or belief, a California entity that was licensed and registered to do business in the State of Rhode Island during the above referenced period of time.

20. There are other participants to whom this complaint will refer other than the named defendants who would necessarily have had knowledge of, and assisted and/or endorsed, the coordinated scheme of involving fraud by the named defendants, who are not directly accused or made part of this Amended Complaint at this time because of the nature of the original pro se complaint and its convoluted history; however, the plaintiff reserves the right to name said other participants as defendants in the future. Nevertheless, the culpability of these "other participants" will become self-evident.

EVENTS

21. During or about 1986, but prior to the below referenced events, the immediate area of the plaintiff's property was being considered for redevelopment by both the City of Providence and the State of Rhode Island.

22. The redevelopment projects, as referenced above, included, but was not necessarily limited to the following possibilities:

a) the construction of a convention center and attached hotel, and

b) the construction of a new police and fire department headquarters.

23. These development projects would have encompassed all of the plaintiff's properties, and, as such, were these plans to proceed, the properties would become extremely valuable.

24. Furthermore, it is, and has been for some time now, the intention of the State of Rhode Island to relocate the junction of National Defense Highways I-195 and I-95 further South, which would permit the re-connection of Friendship Street with West Friendship Street providing a new "Gateway" to the heart of the newly developed section of downtown Providence which would be created by the removal of a large section of I-195.

25. The location of the plaintiff's properties provides easy access to both highways, even after the planned relocation of on-ramps occurs. *(See: Exhibit _____, Graphic Chart of the subject properties)*

26. The defendants learned of these possibilities before the "general public" as they have many business activities with both private and public planners and developers, and began an enterprise which would permit them to acquire the plaintiff's properties, through the use of fraud and deceit, prior to any such development - after which the properties would "sky-rocket" in value.

27. The alleged transactions, including correlating time periods, during which the defendants and "other participants" (as referenced above) acted in accordance with their scheme to defraud the plaintiff of his real estate holdings, are as follows:

a) The 1986 - Purchase and Sales Agreement (All Purchase and Sales Agreements

hereinafter referred to as "PSA"s), Closing sheet, Deed transfer re: 290-292 Friendship St.

b) April 15, 1987 - Plaintiff's Personal Loan Application was for $6,000.00; $7,840.00 was suggested by Greater Providence & Trust official and then later fraudulently converted into a $15,000.00 Second Mortgage placed against the plaintiff's properties (by Charles Greenwood), while the plaintiff was over-seas. Greater Providence Deposit Corp. (hereinafter referred to as GPDC) Loan Officers and other employees assisted in the furtherance and execution of this scheme.

c) October 13, 1988 - PSA executed by the Plaintiff and William T. Larson, intentionally contrived by the defendants to be used in their best interest within the folds of their scheme.

d) December 16, 1988 - PSA executed by the plaintiff and Loft, with Loft acting as an agent for CCAS.

e) March 14, 1989 - closing at MGT between Loft individually and not as an agent of CCAS and the plaintiff (no consideration was paid to the plaintiff, even after execution of all documents).March 15, 1989 - Larson lien (Lis Pendens) is filed.

f) March 16, 1989 - Plaintiff returns to MGT to claim proceeds owed him, but is told that Larson has filed a Lis Pendens lien against property in question.

g) March 25, 1989 - MGT files a **forged** copy of the Plaintiff / Loft PSA.

h) July 12, 1989 - Three Promissory Notes induced by fraud.

i) July 23, 1991 - Loft begins the attempt to collect on promissory notes.

   i) First demand for payment: 7/23/91

   ii) First attempt to foreclose: approx. 10/91

   iii) Second attempt to foreclose: approx. 12/92

j) November 1991 - the plaintiff enters bankruptcy to prevent foreclosure

k) November 1992 - the plaintiff is dismissed from bankruptcy court.

l) November 1992 - Loft again attempts foreclosure

m) November 30, 1992 - the plaintiff files Providence Superior Court C.A. No.: 92-6826 to prevent foreclosure

n) December 1992 - Judge Gagnon finds there is "no foreclosure" because Loft FAILED to advertise foreclosure sale.

o) December 1992 - the plaintiff and Loft begin negotiations regarding the notes.

p) April 17, 1993 - Loft assigns notes to the Rosenblatts in an effort to forestall settlement.

q) Rosenblatts demand payment on promissory notes.

r) Ahmed files suit against the Rosenblatts (Prov. SC C.A. No.: 94-2229)

s) Ahmed files bankruptcy petition again to forestall foreclosure (12/95)

t) Ahmed forced to pay some funds to Rosenblatts to forestall foreclosure ($5,000)

u) Ahmed files this instant action (95-095P) to prevent foreclosure.

v) Ahmed forced to sell all properties and pay Rosenblatts approx. $63, 000 in settlement of promissory notes, although action still pending.

MALEK AHMED: THE REAL PARTY IN INTEREST

28. The plaintiff, Malek Ahmed, is the former owner of several parcels of real estate located in central Providence abutting Inter-States 95 and 195.

29. The plaintiff had engaged attorney Charles Greenwood to represent him concerning his interests during this particular time period during which, in complete betrayal of his client's interests, Greenwood, in complicity with the other party defendants and other participants, planned, conspired and enacted a scheme through the use of fraudulent means, in violation of several federal and state statutes, whereby the plaintiff would be divested of and the defendants, and/or their agents, assignees, or subsequent purchasers, would acquire all of the plaintiff's valuable real estate.

30. The defendants would accomplish such a goal by means of carefully planning and coordinating a pattern or series of fraudulent transactions which laid the ground work of, and built the foundation for, an act which culminated on July 12, 1989, whereby the defendants deceived the plaintiff into granting them three promissory notes secured by mortgage deed which covered all of his valuable property.

31. The plaintiff, is a naive and trusting individual who placed his complete trust in his past friend and attorney, Charles Greenwood. Mr. Greenwood placed his client, the plaintiff, in a position whereby Mr. Greenwood and the other defendants could take complete advantage of the plaintiff's simple and trusting nature, in order to further their scheme which was being achieved through a pattern of deceit and fraud. The defendants were well aware that the plaintiff, a semi-literate Arab immigrant who had already

demonstrated his naiveté, would be no match for their shrewd plot to divest the plaintiff of his real estate holdings, transferring said holdings to themselves and profiting immensely therefrom.

32. This Amended Complaint alleges, inter alia, violations of the Organization Crime Control Act of 1970, publ. No. 91-492 § 901 (a) 84 statute 941, Racketeered Influenced and Corrupt Organizations Act (R.I.C.O.), violations of 15 U.S.C. § 1635, and violations of Rhode Island General Laws, 19-25.2-25; 19-25.2-29; and 19-25.2-30; and other statutes.

33. It is brought by the plaintiff in defense and prosecution of an elaborate scheme which was devised, conducted, and/or participated in by the nominal defendants, as well as significant others that shall be denoted and referred to in this Amended Complaint, for the purpose of defrauding the plaintiff.

34. These "significant others" referenced above are not named as party defendants; however, each was either enlisted by the defendants, or associated therewith, either directly or indirectly, voluntarily or unwittingly, for the purpose of promoting the defendants' scheme.

35. The defendants, in the furtherance of their scheme to defraud the plaintiff, engaged, as a group, in a pattern of racketeering activity.

36. The racketeering activity referenced above involved fraudulent real estate schemes relating to various choice real estate holdings belonging to and owned by the plaintiff.

37. The plaintiff's real estate holdings referenced above were collectively the subject of Federal, State and municipal revitalization programs which began during the mid 1980's that would have increased the value of the subject realty immensely.

38. The defendants, with full knowledge of the revitalization plans referenced above ,did act in such a manner so as to conspire, plan, coordinate, and scheme in a long series of bogus real estate transactions involving the plaintiff and his real estate. Said actions were premised upon fraud, misrepresentation, deceit, false inducement, connivance, and the deliberate misuse of and misplacement of the plaintiff's trust in his attorney, Charles Greenwood, who, being an integral and pivotal player in the scheme, acted as a guiding agent for the defendants.

39. The actions of the defendants referenced above took place for the sole purpose of wrongfully and unlawfully divesting the plaintiff of all of his real estate holdings without due consideration and to his severe detriment.

40. As a result of the defendants' scheme to defraud the plaintiff, the plaintiff has presently lost all of his properties, and has suffered severe penalties, costs, expenditures, and various other hardships.

41. This amended complaint also alleges

a) violations of Rhode Island Common Law: tort and fiduciary duties,

b) violations of federal and state law for fraud, extortion, negligent misrepresentation, embezzlement, fraudulent conveyances,

forgery, abuse of process, conspiracy, as well as violations of the rules of professional conduct and violations of R.I.G.L. § 19-25, 2-2,

c) claims for money paid to and received by the defendants from the plaintiff based upon false pretenses,

d) concealment and non-disclosure,

e) extortion,

f) intentional assistance in and inducement of the violation of fiduciary duties,

g) unjust enrichment,

h) civil conspiracy,

i) acts in concert to defraud and mislead, and

j) fraudulent disposition of assets.

42. The relief sought includes actual damages, punitive damages, treble damages arising from the scheme to defraud set forth herein, the imposition of constructive trusts with tracing, the imposition and execution of equitable liens, the voiding of any and all fraudulent transfers, restrictions on future conduct, an accounting, costs of investigation and prosecuting this action, interest, and attorney's fees.

The Pattern of Unlawful Racketeering Activity by Sequence

1986 - "The Origin of the Plan"

LOFT & GREENWOOD DISCOVER THE PLAINTIFF'S NAIVE AND TRUSTING NATURE

43. For all intents and purposes, the scheme which culminated in the conspiracy to defraud and divest the plaintiff of all of his real estate holdings was conceived as a direct result of the October/November 1986 real estate transaction between the plaintiff and Loft, who was acting on behalf of Capital Center Associates Three, a partnership which involved, and may continue to involve, Loft and three others. *(See: Exhibit _____'86 documents)*

44. The plaintiff met only with and dealt only with Loft, and, thus, assumed Loft was the sole purchaser.

45. Greenwood, acting as friend and counsel for the plaintiff, took an active role in the proceedings of this transaction.

46. The plaintiff placed complete faith and trust in his friend and counsel, attorney Charles Greenwood.

47. This above referenced transaction was the first official business interaction between the plaintiff, Loft, Greenwood, and Greater Providence Deposit Corporation (GPDC), which institution was the primary lender for the buyer, Loft/Capital Center Associates Three.

48. GPDC was a participant in future transactions involving the plaintiff - always at the suggestion of either Loft or Greenwood.

49. GPDC was suggested by Greenwood to the plaintiff for the plaintiff's 1987 personal loan transaction.

50. If there was a Purchase and Sales Agreement in 1986 it would have been entered into prior to November 1986.

51. Both the exact purchase price and the exact amount of deposit which Loft paid to the plaintiff for the 290-292 Friendship Street property is presently unknown to the plaintiff as he was provided no documentation by Greenwood or Loft.

52. The above reference transaction was a fraudulent transaction during which the plaintiff was supplied no copies of any of the documentation so that he might never obtain knowledge as to what exactly transpired.

53. Greenwood, in connection with this scheme and on-going pattern of keeping the plaintiff uninformed, retained all legal documents in his possession.

54. Greenwood negotiated and kept track of all the financial terms and arrangements between the plaintiff and Loft.

55. Greenwood afforded the buyer Loft the luxury of not needing to secure much money through financing for the acquisition of the real estate.

56. Loft had secured financing to borrow only $ 48,750.00, where the properties sale price was significantly higher than this sum.

57. The remaining moneys left from the purchase price was provided to the plaintiff by way of a Private Mortgage which the plaintiff held. The plaintiff was unfamiliar with the usage of that term and its application and the plaintiff trusted Greenwood for such matters.

58. The exact amount of the mortgage which the plaintiff held is not presently known to the plaintiff as he was provided no documentation by Greenwood and the mortgage deed as recorded with the City of Providence states no amount.

59. In terms of mail and wire fraud, Greenwood contacted Loft through the mail and by telephone, and mailed documents to the City of Providence's division of Land Evidence Records regarding the above referenced fraudulent transaction.

60. By the time of the closing on or about 11/ 5 / 86, to the best of the plaintiff's knowledge, information, or belief, Greenwood had not prepared a private Mortgage Agreement and had no record or document to substantiate or denote the terms and plans for payment or any other essential terms of the agreement; thus, Greenwood was not in compliance with R.I.G.L. section 19-25.2.

61. The plaintiff's file which was obtained from Greenwood (through Alfred Thibodeau) in 1992, contained neither the plaintiff's copy of the PSA for 290-292 friendship Street, nor the promissory note secured by

private mortgage deed which was held by the plaintiff regarding the same property.

62. Greenwood, in an effort to prevent the plaintiff from learning of the true nature of the above referenced real estate transaction, including the amount actually due the plaintiff according to the 2nd mortgage which the plaintiff "took back", deliberately removed any references to said transaction from the plaintiff's file prior to presenting it to subsequent counsel for the plaintiff, Alfred Thibodeau.

63. The underlying factors of the Private Mortgage Agreement were readily known and shared by Greenwood, Loft, and all the partners of Capital Center Associates Three who must have been provided with copies by mail or informed of such by wire.

64. The plaintiff was left by the defendants with an unsecured and fragile transaction as a result of this agreement, and has no way of knowing whether or not he has been truly paid the full purchase price of the property.

65. The plaintiff had no knowledge of the essential terms of the agreement, having entrusted all documentation and details to Greenwood.

66. To the best of the plaintiff's knowledge, information, or belief, the promissory note required monthly payments of approximately two hundred twelve ($212) dollars, and allegedly had to be "paid off", for a reason unknown to the plaintiff, in May of 1989 *(This assumptive information is taken from Loft's deposition of 3/17/94, in which he claims he "had to" pay-off the note when he did. See: Deposition, pg. 93, ln.23-24)* (See: Exhibit _____); however, said lump sum amount (if paid in full) was not

paid to the plaintiff, but was, in stead thereof, directed to Greenwood in 1989.*(See: Exhibit _____)*

67. Thereafter, Greenwood personally recorded a discharge of the above referenced mortgage with the City of Providence's Land Evidence records bureau on May 25, 1989 at 10:24 A.M. *(Note: (See: Exhibit _____) This date, 5/25/89, will once again be mentioned in the context of the defendants' scheme to defraud the plaintiff, as it was on this same date, at 10:28 A.M., MGT admits, in its answer to the plaintiff's complaint, it recorded the CCAS/Plaintiff PSA - later alleged to be a forgery by the plaintiff, and attested to by a court certified handwriting expert as a forgery (See: (See: Exhibit _____) Report of Pauline Patchis). This places Greenwood and an agent for MGT together, both committing fraudulent acts against the plaintiff, both of which benefited defendant Irwin Loft. Since these documents were recorded only four minutes apart, it is not unreasonable to assume Greenwood was, in fact, THE agent of MGT, and was, thereby, acting as Loft's agent - as MGT had been hired by Loft for the purpose of recording the Plaintiff/CCAS PSA in the first place).*

68. It was Loft who chose GPDC as his primary lender. *(See: Exhibit _____) (Note: This is same branch office that was involved in the future 1987 personal loan application made by the plaintiff at the suggestion of Greenwood, during which the plaintiff was even further defrauded.)*

69. On or about the November 5, 1986 closing date, the bank's mortgage deed, and the plaintiff's mortgage deed, were recorded to secure the amounts borrowed by Loft/Capital Center Associates Three. *(Note: The formality*

and the detailed arrangement regarding the amount and terms as set forth in GPDC's mortgage deed, and the formality and detailed arrangement regarding the amount and terms of the mortgage deed drafted by Greenwood on behalf of Loft on July 12, 1989, in comparison with that mortgage deed drafted by Greenwood in 1986 regarding the 290-292 Friendship St. property, makes it seem clear there is an attempt to obscure the exact nature of the transaction of 1986. Greenwood used deliberately contrived obscure wording. The mortgage deed prepared by Greenwood in 1986, ostensibly drafted on behalf of the plaintiff, provides no amount nor any required terms of payment; it states only that said mortgage deed is given in consideration of a "promissory note of even date" - a note which the plaintiff does not have, having not been given a copy.) (See: Exhibit _____)

70. The 1986 Purchase and Sales Agreement and Private Mortgage Agreement were never recorded. Only the identical Warranty Deed and mortgage deeds were recorded. *(See: Exhibit _____, same as above)*

71. To the best of the plaintiff's knowledge, information, or belief, the plaintiff was not provided copies of any promissory note, mortgage agreement, schedule of payments, nor any other supporting documents.

72. Greenwood notarized signatures on documents relating to the closing referenced above.

73. The plaintiff received periodic payments concerning this agreement and had no knowledge of its length or duration; none of the formalities involving a transaction concerning a private mortgage were adhered to. All such matters were entrusted to Greenwood.

74. Mail and wire fraud is readily established regarding this fraudulent transaction by way of the defendants', as well as GPDC's, communications, which were both through the mails and by telephone. *(GPDC's, its officers', and/or its agents', involvement and culpability in this scheme to defraud the plaintiff becomes clearer upon review of their actions up through and including 1987 as well as their attempted foreclosure on the fraudulent mortgage in 1991.)*

75. Capital Center Associates Three, through Loft, made payments regarding the mortgage the plaintiff held on the 290-292 Friendship St. property, directly to the plaintiff when he was in residence; however, payments were directed to Greenwood when the plaintiff was overseas.

76. To the best of the plaintiff's knowledge, information, or belief, he personally received payments from Loft/Capital Center Associates Three for approximately one year - after which time said payments ceased or were directed to Greenwood.

77. When Loft/Capital Center Associates Three directed payments to Greenwood regarding the mortgage the plaintiff held on 290-292 Friendship Street, said payments were made through the mail, thereby said payments were tainted by the actions of the defendants in their scheme to defraud and divest the plaintiff of his valuable real estate holdings, and become, in and of themselves, acts of mail fraud.

78. The plaintiff did not, at the time, keep track of, nor, at the time, did he demand accountings for, those payments received by Greenwood on the plaintiff's behalf during his absence, as he placed full faith and trust in his attorney, Mr. Greenwood.

79. The plaintiff may have been partially deprived of his property regarding the 290-292 Friendship Street transaction, as he has no way of knowing whether or not he has been fully compensated, since he has been deliberately denied access to any of the records of the transaction.

80. Furthermore, as the mortgage deed, itself, is devoid of any essential terms or arrangements which would permit the plaintiff to ascertain the terms of said mortgage, or even the amount of such, the plaintiff cannot rely upon this document in order to determine if he has been properly and fully compensated.

81. The plaintiff had no suspicion of any wrong-doing regarding Greenwood's representation of him and continued to place complete faith and trust in Greenwood and continued to conduct business as directed by Greenwood, signing documents as requested, including the discharge of the mortgage, as referenced above, which he held on the Friendship St. property. This action effectively discharged defendant Loft from having to make any further payments on the mortgage.

82. The discharge referenced above was mailed to all interested parties contributing to the defendants continued use of the mail for fraudulent purposes, and thus, constitutes mail fraud.

83. This first phase of the scheme to defraud the plaintiff in 1986, spawned the occurrence of the next phase of the scheme which took place in 1987, because the defendants came to realize the extent to which the plaintiff could be completely duped. With the success of this 1987 incident regarding what was to have been a $6,000 personal loan but which turned out to be a $15,000 mortgage loan, the

defendants realized they could, in fact, proceed with their plan to deprive the plaintiff, through subterfuge, deception, fraud, and misrepresentations, of all of his properties.

"The Plot Thickens"

The Greater Providence Deposit Corporation Loan

A Cabal of Lawyers & Bankers get their Piece of the Plaintiff

84. In April 1987, the plaintiff was planning a several month trip to his native country, Yemen.

85. Greenwood suggested to the plaintiff that he extend his vacation and include Europe on his vacation itinerary; however, the plaintiff informed Greenwood he did not have the funds necessary for such an extension. Greenwood then suggested to the plaintiff that he borrow the needed funds.

86. At some point soon thereafter, the plaintiff informed Greenwood the plaintiff would be following Greenwood's suggestion and intended to borrow six thousand ($6,000) dollars to use during his extended trip.

87. Greenwood told the plaintiff to see an acquaintance of Greenwood's, Ronald Maggiacomo, at the Atwood Avenue branch of GPDC to apply for the loan.

88. Greenwood knew one, or more than one, of the officers at that particular branch of GPDC. *(Note: Defendant Loft also conducted business at this same branch of GPDC, as referenced above regarding the 1986 sale of the 290-292 Friendship St. property which he purchased from the plaintiff.)*

89. The plaintiff applied for, and was approved for, what he thought was a consumer loan in the amount of six thousand ($6,000) dollars. *(See: Exhibit_____) (Note: The defendants never expected the documents to be later examined and understood by the plaintiff, or anyone else; therefore, they found it not necessary to attempt to have the plaintiff sign a proper mortgage loan application. They merely wrote in, over the words "Consumer Loan", the word "mortgage" after the plaintiff had signed the document. This sloppiness on the part of the defendants was considered to be an acceptable risk - given the plaintiff's naiveté.)*

90. The applicant information was prepared and recited by another after the fact. It is inaccurate. The plaintiff did not became aware of the inaccuracies until much later.

91. One day later, on April 16, 1987, Greenwood telephoned the plaintiff and told him that his loan had been approved and to go to the bank to pick-up his check. Even though the approval came after only one day, the plaintiff did not suspect anything unusual regarding the loan .

92. During the above referenced telephone call, Greenwood told the plaintiff that Sumner Stone, an associate of Greenwood's, would accompany the plaintiff to GPDC to ensure there would be no problems with the loan.

93. Sumner Stone was acting as agent for Greenwood regarding this transaction.

94. The plaintiff rightly assumed Sumner Stone would be acting as counsel for him if the need arose, for there was no other reason for Greenwood to have sent Sumner Stone with the plaintiff.

95. The defendants knew there were going to be problems because they had created the problems. *(Note: Mail and wire fraud were most prevalent during time period.)*

96. GPDC, although presently a non-defendant in this action, was intimately involved in this fraudulent action perpetrated against the plaintiff.

á part

GPDC's later involvement with DEPCO (Depositors' Economic Protective Corporation established by the State of Rhode Island to liquidate insolvent financial institutions as a result of the "Credit Union" crisis in Rhode Island in 1991 - during which time two thirds of Rhode Island depositors saw their financial assets frozen and/or ceased) **was no accident**. GPDC was a **corrupt** institution which readily served the needs of many **corrupt** individuals. It is interesting to note that, in the heat of the crisis, when bank examiners entered the GPDC office at the Atwood Avenue branch, branch manager, Ronald Maggiacomo, the man who handled the plaintiff's loan application (Charles Greenwood's associate?) placed

a military assault rifle on his desk in full view of the examiners. Maggiacomo's message was clear. *(See: Exhibit _____)*

---

97. Upon arrival at the bank with Sumner Stone, the plaintiff was informed of a judgment in the amount of one thousand eight hundred forty ($1,840) dollars which had been obtained against him by Rhode Island Hospital Trust National Bank, hereinafter referred to as "RIHT". The plaintiff was unaware of the judgment and lien placed upon his property prior to this time.

98. State District Court records indicate the plaintiff was not provided notice of the action which resulted in the RIHT judgment.

99. The defendants and RIHT knew this judgment could be vacated as it had been improperly obtained. *(Note: Any documents sent through the mail or discussed over telephone lines pertaining to the RIHT judgment as they related to the GPDC loan became tantamount to mail and wire fraud, as said transfers and discussions took place as a result of the defendants' scheme to defraud the plaintiff.)*

100. After being informed of the RIHT judgment and the need to satisfy it, the plaintiff was assured there were no additional amounts due and the full amount owed to RIHT was $1,840. Greenwood's associate, Sumner Stone advised the plaintiff regarding this action and also reassured the plaintiff.

101. Therefore, the plaintiff was induced by fraud to increase his application for a personal loan from $6,000 to $7,840. He then received a check in the amount of $6,000 *(See: Exhibit ____, $6,000 check)*

102. The plaintiff was planning to leave for Yemen and had much to do and was told by the bank officer, Ronald Maggiacomo, there was insufficient time to prepare new documents that day, since the bank was closing; therefore, the plaintiff was asked by the bank officer to sign blank loan documents to evidence his $7,840 personal loan.

103. Upon the assurance of Sumner Stone that this would be OK and that the bank could be trusted, the plaintiff signed several blank documents. *(Note: All documents that were prepared and drafted on these blank forms were transferred through the mails and were procured through fraud in the furtherance of the defendants scheme. All checks sent to payees through the mail were also procured through fraud and as such would constitute mail fraud. There would necessarily be interstate commerce by virtue of the fact that check payments go through - whether physically or electronically - the Federal Reserve "clearing house" system. Also GPDC directly sent by mail notice to the plaintiff's primary mortgage holder (See: Exhibit_____) , that they were a second mortgage holder. This constitutes mail fraud. There were other instances of mail fraud concerning Greenwood's handling of the plaintiff's financial affairs while the plaintiff was away.)*

1987 - "Greenwood Tightens His Grasp"

THE PLAINTIFF IS MISLEAD INTO SIGNING A VIRTUALLY BLANKET POWER OF ATTORNEY WHICH PROVIDES GREENWOOD THE ABILITY TO PERFECT THE SCHEME.

104. On or about April 17, 1987, the plaintiff left the United States of America and spent several months in Europe and the Middle East.

105. Prior to the plaintiff's departure referenced above, Greenwood telephoned the plaintiff and informed him that Greenwood would need the plaintiff to sign a power of attorney in order for Greenwood to collect rents and pay the plaintiff's bills during his absence.

106. The power of attorney the plaintiff signed did not contain the comprehensive language that was found on the first page of the power of attorney. The plaintiff's signature on the side of the first page of the document is a "paste-on". *(See: Ex._____ copy of power of attorney - original has never been produced)*

107. When Greenwood was asked for a copy of the **original** power of attorney he responded he could not find it. *(See: Ex._____)*

108. This altered and fraudulently produced copy of the power of attorney was constantly sent through the mail in furtherance of the scheme to defraud the plaintiff.

109. Greenwood, acting as the plaintiff's "attorney in fact", authorized the fraudulent conversion and alteration of the plaintiff's GPDC loan from a $7,840 **personal loan** to a $15,000 **second mortgage loan**, without the plaintiff's knowledge or consent, and GPDC officials were readily aware of this fact.

110. The consumer loan closing sheet, dated April 15, 1987, was signed **in blank** by the plaintiff as advised by, Sumner Stone, who was acting as agent for Greenwood. *(See: Exhibit_____)*

111. The information on the above referenced closing sheet, later presented by and filled in by another, and is false, as referenced above.

112. The fee of John A. Colletti (of the law firm Colletti & Tente), hereinafter referred to as "Colletti", as stated on the above referenced closing sheet, differs from the actual amount he received by cheek *(See: Exhibit _____)*.

113. Greenwood had no authorization to receive any funds from the proceeds from the GPDC loan, and the plaintiff owed Greenwood no money at time.

114. All funds in excess of the $7,840, were procured by fraud, and as the disbursements of said funds were sent through the mail in furtherance of the scheme to defraud the plaintiff, the mailing of said disbursements constitutes mail fraud.

115. Greenwood had no authorization to alter or amend in any way any transaction of the plaintiff that occurred prior to the signing of the power of attorney - which was for the purpose of collecting rents only.

116. Greenwood, as "attorney in fact", received a distribution from the proceeds of the GPDC loan in the amount of five thousand one hundred sixty ($5,160.15) dollars and fifteen cents. *(See: Exhibit_____)*

117. Greenwood has never provided an accurate accounting of the $5,160.15 he received from the proceeds of the loan.

118. Greenwood directly misstated to Mary Lisi, acting as disciplinary counsel in an action against him filed by the plaintiff, that he had nothing to do with GPDC. *(See: Exhibit _____)*

119. Greenwood's response to the complaint filed against him is replete with complete falsehoods and was sent in furtherance of a cover-up of the scheme to defraud the plaintiff and since the response was sent through the mail, the mailing of the response constitutes mail fraud. *(Note: The disciplinary counsel, Mary Lisi, failed to understand these discrepancies at the time and disposed of the complaint without fully understanding or ascertaining, or even without making the proper effort to understand or ascertain, the truth (See: Exhibit _____). Other attorney officers of the court implored her to pursue the matter more diligently - to no avail. (See: Exhibit _____))*

120. Based upon the face of the closing sheet alone, one can clearly determine it to be a fraudulent document. As is clearly indicated on said closing sheet, check no. #3335414, in the amount of $5,160.15, was dispersed on 4/15/87; however, the check was not issued to Greenwood as the customer's attorney in fact until 4/28/87, some thirteen days later - after the plaintiff had left the United States for Europe and the Middle East.

121. The check disbursed to Greenwood referenced above was endorsed over to Home Loan and Investment Association as payment on his personal account with them *(See: Exhibit_____)*.

122. Greenwood later deliberately falsified an accounting to the plaintiff regarding the disbursement of this check that claimed said funds were expended on the plaintiff's behalf, in part claiming the funds were needed to satisfy the plaintiff's request for Western Union wire transfers of funds to the plaintiff in the Middle East; however, the plaintiff made no such request until sometime after May of 1987, and Greenwood, therefore, could not have known he would need the additional funds in March of 1987 when he received them from the proceeds of the GPDC loan as the plaintiff's attorney in fact. *(See: Exhibit_____)*

123. The plaintiff's signature is clearly found on a representation dated April 21, 1987, that his right to rescind has not been exercised *(See: Exhibit_____)*; however, the plaintiff was in Belgium on that date and could not possibly have signed the document on that date. *(See: Exhibit_____, copies of plaintiff's US Passport).*

124. GPDC bank officer, Caroline Norato, hereinafter referred to as "Norato", signed as a witness on the above referenced date. It was not possible for her to witness the plaintiff's signature on that date as he was clearly out of the country. *(Note: This lends credence to the FACT that the GPDC loan was a fraudulent transaction concocted by the defendants to defraud the plaintiff.)*

125. The above referenced representation, procured by fraud, was sent through the mail in furtherance of the defendants' scheme. *(Note: to North East - assignee of mortgage, and all other interested parties.)*

126. Greenwood signed a mortgage deed on the plaintiff's residence to secure the GPDC loan *(See: Exhibit _____)*. In this regard he should have submitted the power

of attorney to afford him the right to execute and record the mortgage deed on the plaintiff's behalf. There is no power of attorney recorded.

DEFENDANTS MAKE IMPROPER EXPENDITURES IN THE FURTHERANCE OF THE SCHEME

127. Greenwood had no authorization to mortgage the plaintiff's property during his absence, nor at any other time.

a) To the best of the plaintiff's knowledge, information, or belief,

b) Colletti performed the title search on behalf of the lender,

c) the plaintiff never met Coletti in his life,

d) the plaintiff never authorized Colletti to act as the plaintiff's attorney,

e) Coletti never entered his appearance on behalf of the plaintiff regarding the 1980 RIHT judgment.

f) Colletti signed a judgment stipulation which represented him to be the plaintiff's attorney, and authorized a payment in the amount of three thousand one hundred forty ($3140) dollars to satisfy the RIHT $1,840 judgment. *(See: Exhibit _____)*

128. Regarding the RIHT judgment, and the satisfaction thereof:

a) There was no attempt to mitigate it, justify it, or determine its validity.

b) No authorized consent forms were ever made by the plaintiff, nor have they ever been alluded to or revealed.

c) There was no attempt to vacate the improperly received judgment, as would the plaintiff have the right to do since the judgment was faulty.

d) Norato authorized the payment to satisfy this judgment, as well as the payment to Colletti, *(See: Exhibit_____)*

e) Neither RIHT nor its attorney responded to, or questioned, this "windfall" payment which amounted to $1,300 greater than the actual judgment and seemingly "took the money and ran". *(It is not known to the plaintiff whether or not RIHT actually received any funds at all, and RIHT, may, in fact, have received a bill in the mail for this transaction.)*

129. By common practice, liens such as that placed by RIHT on the plaintiff's property can remain indefinitely without satisfaction, and, as such, said liens need not prevent the granting of a second mortgage; however, the defendants, and related others, ceased this opportunity to further line their pockets, with the unwitting plaintiff's money.

130. Payments to RIHT, and various others, regarding the fraudulent GPDC loan were most probably sent through the check clearing house of the Federal Reserve Bank of Boston - as is customary - whether physically or electronically, and said transfers clearly constitute mail and/or wire fraud in the conduct of interstate commerce, as each institution through which said payments flow is paid for its services.

131. The mortgage note which GPDC held on the plaintiff's property as a result of this aforementioned fraudulent activity was assigned to Northeast Savings and Loan in the State of Connecticut and said transaction involved mail and/or wire fraud in the conduct of interstate commerce, as the mortgage note and related documents, themselves, were fraudulent instruments.

132. Documents from the 1987 GPDC loan indicate that Coletti performed the title work prior to April 15, 1987, which is the date on a document signed by the plaintiff indicating that he chose Coletti to provide such services; however, said title work could not possibly have been done prior to the plaintiff's application for the loan *(See: Exhibit_____)*. Said document is actually one of the documents which the defendants induced the plaintiff to sign while blank through fraudulent and misleading means.

133. Any and all requests to Coletti for information and documentation regarding his representation of the plaintiff have been ignored.

134. The plaintiff did not become aware of the true amount and nature of the GPDC loan until 1991 when GPDC attempted to foreclose.

135. The plaintiff eventually learned that what he thought was a $7,840 personal loan from GPDC was actually a $15,000 ten year second mortgage loan, and would have resulted in a total of payments in the amount of approximately $28,000.

136. The plaintiff had been paying two hundred thirty two ($232.90) dollars and ninety cents per month, tearing out coupons from a loan payment book which did not provide information regarding the initial principle amount, descending principle balance, number of payments remaining, nor the amount of interest being paid.

137. While the plaintiff was overseas in 1987, Greenwood signed a mortgage deed covering the plaintiff's principle residence as "attorney in fact" with Coletti signing as notary for said transaction, as referenced above.

138. The GPDC loan application (which the plaintiff signed blank under advise of counsel, Sumner Stone) was fraudulently redesignated as a 2nd mortgage/equity loan application, as referenced above. *(See: Exhibit _____)*

139. Many of the documents regarding the GPDC loan during this time were transferred through mails to, or discussed over the telephone with, other interested parities, and, since said documents were procured through and by the use of fraud, any transfer of said documents through the mail or discussions regarding any said documents over the telephone constitute mail and wire fraud as defined by law.

140. Upon his return to the United States, the plaintiff asked Greenwood to tender to him the balance of funds

collected on his behalf by Greenwood during the plaintiff's absence.

141. Greenwood replied he did not have all of the plaintiff's money and, instead, wrote a personal check in the amount of $2,000 to the plaintiff. *(Note: Greenwood did not maintain a separate escrow account for the plaintiff (his client) as is ethically required.)*

142. The plaintiff did not harbor any suspicions that Greenwood should not have co-mingled his personal funds with that of the plaintiff's; therefore, the plaintiff continued to place his trust in Greenwood and relied on Greenwood's assertions that the plaintiff's best interests were being maintained.

1988 - "Plump for the Picking"

The Larson/Ahmed PSA & the Loft-CCAS/Ahmed PSA

THE "TUG-OF-WAR" BETWEEN THE PLAINTIFF & THE DEFENDANTS FOR THE PLAINTIFF'S PROPERTIES BEGINS

143. On October 13, 1988 the plaintiff entered into a PSA with Larson, hereinafter referred to as the "Larson agreement", wherein the plaintiff agreed to sell, and Larson agreed to buy, the property located at 47 Maple St., Providence, for one hundred twenty thousand ($120,000) dollars *(See: Exhibit _____)*.

144. The Larson agreement was drafted by Greenwood in Greenwood's office in the presence of both the plaintiff and Larson.

145. Upon the signing of the Larson agreement, Larson wrote a check, as a deposit on the said property, payable to Greenwood in the amount of five thousand ($5,000) dollars *(See: Exhibit _____)*

146. The Larson agreement contained a mortgage contingency clause, wherein the parties "...expressly agree[d] ... that this agreement is subject to the buyer's ability to obtain a first mortgage loan for the purchase of the premises." *(See: Exhibit _____)*

147. The mortgage contingency clause in the Larson agreement stated that, if, after reasonable effort, Larson was unable to obtain a mortgage commitment by October 20, 1988, Larson "shall so advise the seller, in writing, on or before October 20, 1988, and this agreement shall become null and void, and all payments made hereunder shall immediately be returned in full to" Larson.

The Trap Is Set

148. On or about October 20, 1988, Larson wrote a note of the same date, which he gave to the plaintiff, and said note indicated that Larson was unable to obtain financing and that the plaintiff could hold Larson's deposit for an additional week *(See: Exhibit _____)*.

149. The plaintiff informed Larson, on or about October 20, 1988, to contact Greenwood regarding the return of the deposit and that the plaintiff would be instructing Greenwood to return said deposit.

150. The note referenced above can be construed to be ambiguous in that it may be interpreted as an amendment to the Larson agreement regarding the mortgage contingency clause.

151. Greenwood, regarding said note of October 20, 1988,

a) never took action to effectively terminate the agreement, and

b) did not determine the status of the agreement as it related to this note.

152. The Larson agreement clearly states said deposit shall be returned "immediately", and Greenwood, as the plaintiff's attorney in the matter, should have known he was required to return the deposit, or, in the alternative, amend or modify the Larson agreement.

153. Greenwood did not amend or modify the Larson agreement, nor did he obtain a release from Larson.

154. Greenwood neither amended nor modified the Larson agreement because it was the intent of the defendants to use the Larson agreement as an encumbrance against the plaintiff's property in the furtherance of their scheme to defraud the plaintiff.

155. On or about October 20, 1988, the plaintiff and Greenwood discussed the effect of the Larson note, wherein Larson purportedly extends his obligation under the mortgage contingency clause for an additional week, from which an inference can be drawn that there was or could possibly be a modification of or amendment to the Larson

agreement as referenced above; however, during said conversation, Greenwood did not inform the plaintiff that the agreement had been, could have been, or could possibly be construed to have been modified by the Larson note of the same date.

156. Greenwood's failure to inform the plaintiff of any possibility of change in the Larson agreement as a result of the note of October 20, 1988, as referenced in the previous paragraph, was, in fact, a deliberate misleading of the plaintiff into believing the Larson agreement had been terminated, when, in fact, it had not been, or may not have been, terminated.

157. Greenwood's failure, as referenced above, was not a failure at all, but was merely one more deliberate act of misrepresentation which was designed and concocted to further the defendants' scheme to defraud the plaintiff of his real estate holdings, whereby the defendants would obtain effective control or outright ownership of the plaintiff's valuable properties.

158. Larson initially refused to have his deposit returned in order to be able to later prevent any subsequent sale of the property, and Greenwood, in collusion with Larson, held Larson's deposit without the plaintiff's knowledge, thereby perfecting any claim Larson may have on the subject property as a result of not having had his deposit returned.

159. In substantiation of the above,

a) Greenwood did not draft any document or release regarding the Larson agreement, and

b) Greenwood knew the plaintiff would not have knowledge of any need for any such document or release.

160. During the above referenced discussion between Greenwood and the plaintiff, Greenwood informed the plaintiff that the Larson note of October 20, 1988, terminated the Larson agreement and the plaintiff was able to sell the property to anyone else.

161. The plaintiff, on or about October 20, 1988, instructed Greenwood to return Larson's $5,000 deposit to him.

162. Greenwood assured the plaintiff that he would return Larson's deposit.

163. Greenwood failed to return Larson's deposit until after he had drafted another PSA between the plaintiff and Loft/CCAS regarding the same property.

164. In an affidavit prepared by Greenwood and signed by the plaintiff there is a statement that the plaintiff returned Larson's deposit on December 19, 1988; however, the plaintiff was not afforded the opportunity to read and understand the affidavit as Greenwood rushed the plaintiff stating Greenwood had to get to court.

165. Prior to the signing of the affidavit referenced above, the plaintiff had no knowledge of the correspondence between Smith and Greenwood regarding Larson's deposit, and the defendant had relied upon the assurance of Greenwood (as referenced more fully above) that he would

return the deposit as instructed by the plaintiff (shortly after October 20, 1988).

166. The plaintiff had no involvement with the return of the Larson deposit, yet, it seems clear Greenwood attempted to implicate the plaintiff for the delayed return of the deposit when Greenwood prepared a falsified affidavit which he induced the plaintiff to sign.

167. The above referenced affidavit is clearly false because it states the Larson deposit was returned by the plaintiff on December 19, 1988 when it was, in fact, returned on December 20, 1988, by Greenwood himself.

168. After the plaintiff was assured the Larson agreement was no longer valid, the plaintiff continued to seek other buyers for the subject property.

169. Greenwood knew that after he had assured the plaintiff the Larson agreement was no longer valid, the plaintiff would continue to seek other buyers for the 47 Maple Street property.

170. On occasion when potential buyers would come to look at the subject property, Larson (who owned and continues to own adjacent property) would come over to the plaintiff and question as to whether or not the visitor to the property was a potential buyer and to what degree they were interested in the property.

171. During this time Larson did not inform the plaintiff that Larson considered the Larson agreement to be valid, nor did he inform the plaintiff that Larson had not yet received his deposit.

172. Both Larson and the plaintiff acted toward each other as if the Larson agreement had become "null and void".

173. During this time Greenwood did not inform the plaintiff that he had not returned the Larson deposit as instructed by the plaintiff.

174. If the Larson agreement, during this time, was still a valid agreement, and Larson was a committed buyer, then Larson certainly should have mentioned such to the plaintiff and would have protested the fact that the plaintiff was seeking other buyers; however, he did no such thing.

175. Larson did not act as a committed and normal buyer, in that

a) he did not apply for financing from any financial institution,

b) he did not have the property appraised, and

c) he did not have the property inspected by a certified inspector.

176. Larson's actions, as referenced above, support the claim of the plaintiff that the Larson agreement was merely a ruse concocted by the defendants in furtherance their scheme to defraud the plaintiff of his real estate holdings, whereby the defendants would obtain effective control or outright ownership of the plaintiff's valuable properties.

177. The plaintiff had occasion to see defendant Loft (who owned property adjacent to the plaintiff) and showed Loft the Larson note of October 20, 1988; Loft, after

examining the note informed the plaintiff the note terminated the Larson agreement.

178. Loft informed the plaintiff that Loft, as representative for CCAS, desired to purchase the 47 Maple Street property and the plaintiff informed Greenwood of said desire.

179. Greenwood drafted a PSA between CCAS and the plaintiff, hereinafter referred to as the "CCAS agreement", which was entered into at Greenwood's office on December 16, 1988, with Loft, acting as agent for CCAS giving to the plaintiff a $25,000 non-refundable deposit. *(See: Exhibit _____)*

The Unusually Huge Deposit was Proffered Strictly to Seduce Ahmed

180. The defendants provided the plaintiff with such an unusually high deposit amount for the purpose of luring him into the agreement as part of the defendants' scheme to defraud the plaintiff of his real estate holdings, whereby the defendants would obtain effective control or outright ownership of the plaintiff's valuable properties.

181. The defendants knew the plaintiff was in the process of constructing an addition to his intended residence, 38 Maple St., and offered the above referenced deposit to the plaintiff encouraging him to spend the funds on the addition.

182. The defendants knew, since the plaintiff would follow their advice and spend the funds, that the plaintiff would not have the funds in escrow in the event he was required to return them, for any reason.

183. The defendants knew the plaintiff could not borrow the needed funds in the event he was required to return the deposit because they knew liens were going to be placed on the plaintiff's property as a result of the defendants' scheme to defraud the plaintiff of his real estate holdings, thereby no lending institution would loan the needed funds to the plaintiff.

184. At no time did the defendants and the plaintiff discuss

a) the possibility that the CCAS deposit would accrue any interest, or

b) the possibility that the CCAS deposit would be converted into a promissory note secured by mortgage deed which would indicate the plaintiff owed a debt to Loft.

185. Also on December 16, 1988, the plaintiff entered into a second agreement titled "Purchase and Sale and Occupancy Agreement", with CCAS, which granted CCAS the option to purchase several pieces of properties were said properties ever to be acquired by the plaintiff. *(See: Exhibit _____)*

186. The plaintiff received no consideration for the above referenced second agreement which severely restricted the plaintiff's property rights.

187. This second agreement as referenced above came about as a result of the defendants' scheme to defraud the plaintiff of his real estate holdings, whereby the defendants would obtain effective control or outright ownership of the plaintiff's valuable properties.

188. The defendants would be able to effectively own or control, as a result of the several fraudulent agreements with the plaintiff, nearly an entire block of properties which would enhance the value of said properties were they to be subsequently developed. *(See: Exhibit _____, Map of Area)*

189. At all times relevant hereto, the plaintiff believed he was transacting business with CCAS and not with Loft personally.

190. The CCAS agreement specified

a) the closing was to take place within seventy five days (March 1, 1989), and

b) that "time [was] of the essence".

191. The CCAS agreement contained no wording that required, or could possibly be construed to have required, a release to be obtained from Larson regarding his rights as per the Larson agreement.

192. The defendants did not provide the plaintiff with a copy of the CCAS agreement.

193. Larson, in furtherance of the defendants' scheme, approached the plaintiff and offered to purchase the 47 Maple St. Property for $120,000 "cash", and not requiring the plaintiff to "take back" a second mortgage in the amount of $20,000.

194. The plaintiff, concerned about the CCAS agreement just entered into, approached Greenwood about the Larson offer; Greenwood told the plaintiff to "just ignore him".

195. In a letter dated December 16, 1988, Douglas Smith, hereinafter referred to as "Smith", acting as attorney for Larson, wrote to Greenwood advising him that Larson was "ready, willing, and able" to close on the 47 Maple St. property as scheduled in the Larson agreement, on December 20, 1988. *(See: Exhibit _____) (Note: As referenced above, Larson had not acted as a committed buyer and had not objected to the plaintiff's showing of the property to other interested buyers.)*

196. Larson filed a copy of the Larson agreement on December 19, 1988 with the Land Evidence Records of the City of Providence. *(See: Exhibit _____)*

197. The plaintiff had no knowledge of Larson's action and was completely unaware Larson's deposit of $5,000 had not yet been returned to him.

198. Greenwood did not inform the plaintiff of the above referenced letter.

Greenwood & Larson Play "Ping-Pong" with the $5,000 Deposit as Part of the Ruse

199. On December 20, 1988, Greenwood returned Larson's deposit, in the form of a check, to Larson's attorney, Smith, by mail. *(See: Exhibit _____) (Greenwood attempts to protect himself once the "cloud" on the title was arranged by divorcing himself of the $5,000 deposit as quickly as possible.)*

200. The plaintiff left the country in early January of 1989 and was completely unaware of all these correspondences.

201. In a letter dated January 23, 1989, from Smith to Greenwood, Smith refused to accept the returned deposit check and remailed said check back to Greenwood informing Greenwood that Larson had a valid agreement with the plaintiff. *(See: Exhibit _____)*

202. On January 30, 1989, Greenwood, again, returned Larson's deposit by mail to Smith informing him that he (Greenwood) was "not the agent" for the plaintiff and for Smith to send the check to the plaintiff. *(See: Exhibit _____)*

203. In a letter dated March 9, 1989, Smith informed Greenwood that Smith would deposit the check in escrow on behalf of Larson, and disputed Greenwood's attempt to "abandon" his responsibilities to the plaintiff. *(See: Exhibit _____)*

204. It is the contention of the plaintiff that Greenwood deliberately withheld the deposit until after the plaintiff had entered into the CCAS PSA in order to create the appearance of a "cloud" on the title of 47 Maple Street so that the defendants could make use of said cloud in furtherance of their scheme to defraud the plaintiff of his real estate holdings, whereby the defendants would obtain effective control or outright ownership of the plaintiff's valuable properties.

205. The letters and deposit check referenced above were sent through the mail in furtherance of the defendants' scheme to defraud and divest the plaintiff of his valuable real estate holdings, and become, in and of themselves, acts of mail fraud.

206. Regarding MGT's representation of Loft/CCAS (which will be discussed more fully below under the heading of "1989"):

207. On December 27, 1988, Loft as principle for CCAS wrote to MGT and asked them to search the title on 47 Maple Street *(See: Exhibit _____)*.

208. Loft even "double-checked" with MGT prior to giving the plaintiff an "earnest money" payment on or about March 8, 1989, and MGT allegedly assured Loft the title was still clear *(See: Exhibit _____)*.

209. If MGT had discovered the Larson PSA when asked (twice!), this whole debacle would have been resolved at the time.

210. MGT discovered the Larson Notice of Lis Pendens ONE DAY after its filing!

211. MGT did not discover the Larson PSA filed on December 19, 1988, prior to the closing of March 14, 1989.

212. The above referenced actions of MGT, clearly demonstrate MGT's culpability and liability regarding their actions in this matter.

The Defendants Realize the Larson PSA Is Not A Sufficient Enough "Cloud" for Their Scheme

They Fabricate a Frivolous Action & File a Notice of Lis Pendens

213. The defendants' realized they needed a stronger "cloud" on the title of 47 Maple St. property, which took the form of the Providence Superior Court action (C.A. No.: 89-1353) Larson vs. Ahmed, and the filing of a Notice of Lis Pendens.

214. PSA's recorded in Land Evidence Records expire automatically within a certain period of time if there is no subsequent recordation of transfer of deed, which is one of the reasons the defendants needed to file a stronger lien or cloud.

215. The reason MGT did not "discover" the Larson PSA as filed, was because as a result of the defendants' realization as referenced above.

216. The Superior Court Civil Action, as referenced above, was filed in furtherance of the defendants' scheme to defraud the plaintiff, and, as such, was an abuse of the judicial process. All documents and records sent through the mail regarding this action are, therefore, acts of mail fraud.

217. This civil action requested relief in the form of specific performance. The singular primary issue of the $5,000 deposit, and its significance, was never addressed.

218. Greenwood (representing the plaintiff) and Larson rehearsed the deposition of Larson on June 21, 1989. This deposition was designed to "fill-in the gaps" relating to the defendants' scheme to create the "cloud" on the title.*(See: Exhibit _____,Larson Deposition)*

219. Greenwood never cross-examined aggressively; never asked pointed leading questions; failed to follow-up Larson's inconsistencies and equivocations; and generally

"spoon-fed" Larson with broad open-ended 'why?-type' questions.

220. During a certain portion of the Larson deposition, Greenwood actually suggested to Larson the correct response, which served the purpose of the scheme. *(See: Larson deposition, page 84, line 24)* Greenwood suggested that March 16, 1989 was the closing date for the CCAS agreement (March 14, 1989 was the closing date).

221. Greenwood suggested the above referenced answer to an unsure Larson in order to establish that the Notice of Lis Pendens was filed BEFORE the closing and not after the closing. If there was a closing set for March 14, 1989, then there would be no reason for the delay until the 16th, except to further the defendants' scheme by recording the Notice of Lis Pendens. (The deed could, have been executed and the check transferred on the 14th.) Loft was then afforded the opportunity to exploit the Lis Pendens and the "cloud" on the title it represented.

222. Larson won at trial, but never demanded specific performance; he settled for money damages (He was always offered the return of his deposit).

223. Larson's motivation was to both exacerbate the problems with the "cloud" on the title, and to preserve the trust the plaintiff had in Greenwood.

224. Throughout this time, Loft had separately perfected his "cloud" on the title by inducing the plaintiff to execute three promissory notes by fraud. (See: 1989 discussion below).

The Plaintiff Finds Himself "Trapped" Between Loft and Larson

225. None of the pleadings or the essential documentation's in the Larson vs. Ahmed matter addressed the crucial issue of the $5,000 deposit being held by Greenwood after receiving the October 20, 1988 note from Larson in which he indicated he could not obtain financing.

226. The interrogatory to the jury concerned whether or not Larson's agreement with the plaintiff was valid when Larson recorded the PSA on December 19, 1988; there was no interrogatory concerning the $5,000 deposit. The defendants steered the trial in a direction away from this crucial issue.

227. Larson eventually received a total of approximately $18,000, when he only had paid a $5,000 deposit.

228. Greenwood provided the Disciplinary Counsel (Mary Lisi) a non-sensical response concerning the case filed against him by the plaintiff when he told her that the plaintiff was told by Greenwood to refund the $5,000 deposit to Larson which Greenwood held in his own trust account. The Disciplinary Counsel failed to understand that the plaintiff had no control over Greenwood's trust account and dismissed the complaint.

1989 - "Plucked from the Vine"

The Swindle of the Plaintiff is Near Complete

THE TRAP IS SPRUNG

229. On or about December 16, 1988, Loft, acting as an agent for CCAS, offered to pay the plaintiff a $25,000 non-refundable deposit to purchase the 47 Maple St. property.

230. Loft proffered this ridiculous offer in order to make it appear that the plaintiff went for a better deal and had abandoned the Larson agreement. This appearance served the purpose of the defendants' scheme to defraud the plaintiff of his real estate holdings.

231. Larson knew of the CCAS agreement from its outset. He wrote Greenwood on or after December 16, 1989 to indicate that he was ready willing and able to close; however

a) he had not applied for financing with any financial institution,

b) he had requested no title search to be performed,

c) he had no certified building inspection performed, nor

d) had he shown any other indication that he otherwise ready to buy.

DRAWING HIM DEEPER INTO THE TRAP, LOFT, GREENWOOD & LARSON PREPARE TO CLOSE-IN ON THE PLAINTIFF

232. The plaintiff was reassured by Greenwood that the Larson agreement was terminated..

233. The $25,000 deposit (on a purchase price of $125,000) was a lure in order to distract the plaintiff's attention from the Larson problem (designed as part of the scheme).

234. The CCAS agreement was not contingent upon the plaintiff obtaining a release from Larson or otherwise terminating that PSA.

235. Since the $25,000 deposit was "non-refundable", the plaintiff could keep the $25,000 regardless of what problems the Larson agreement could present.

236. The Plaintiff was distracted by this large sum of money, and failed to realize the huge deposit was proffered purposely in order to distract him from any irregularities in the agreement.

237. Loft and Greenwood encouraged the plaintiff to spend the $25,000 deposit on improvements to his intended residence, 38 Maple Street.

238. After reassurance from Greenwood that it would be all right to spend the $25,000 and to not place the deposit in escrow, the plaintiff used the money to improve 38 Maple Street.

239. Loft knew that the $25,000 would be used to make improvements on the plaintiff's properties, and since the defendants intended to acquire all the plaintiff's properties anyway, Loft was taking no great risk in proffering such a large deposit.

240. There was no provision in the CCAS agreement that the $25,000 deposit would

a) accrue any interest whatsoever,

b) be secured by the plaintiff's property, or

c) under any circumstances, result in promissory notes secured by a mortgage deed encompassing **all** of the plaintiff's other real estate.

241. The stated purpose of the $25,000 deposit was set forth by the contract - it was a deposit, and neither party could back-out of the agreement.

242. In the event of breach by the plaintiff, Loft was not risking the loss of the $25,000 deposit as the CCAS agreement had a provision for the cancellation of the agreement and the return of the deposit upon the eventuality of breach by the plaintiff.

243. The defendants knew the Larson PSA would be recorded and thereby there would be no closing as per the CCAS agreement; thus, Loft's $25,000 was not being risked at all.

244. The real purpose of the $25000 deposit was to seduce Ahmed into executing the CCAS PSA and to blindly trust the defendants who kept telling him that the Larson agreement was null and void.

245. At all times relevant hereto in the sale of 47 Maple Street, the plaintiff believed his transaction was between himself and CCAS, and not with Loft Individually. *(As more*

fully referenced below, Loft caused the closing to be executed on behalf of himself and not CCAS. The plaintiff failed to notice, and his attorney Greenwood never informed him, that Loft individually was the buyer, and not CCAS.)

246. Greenwood prepared and witnessed the signing of the CCAS agreement which stated that the time for performance of the closing shall be held within seventy-five days from entering this agreement and that "time is of the essence".

OPTIONS TO PURCHASE VACANT LOTS INCLUDED IN THE SCHEME

247. On December 16, 1988, Ahmed and CCAS, through its agent Loft, also entered into a ("Real Estate Purchase and Sale Agreement and Occupancy Agreement "), which pertained to options to purchase vacant lots and another improved property on Maple Street held by the plaintiff.

248. The Second CCAS agreement was signed by Ahmed, Loft/CCAS, and Loft's son, Kenneth Loft.

249. The Second CCAS agreement gave CCAS options on two vacant lots, and an option on a house on Maple Street were these parcels acquired by the plaintiff - who was in the process of said acquisition.

250. Greenwood was negotiating on behalf of the plaintiff with the State of Rhode Island to purchase the two above referenced vacant lots and knew the plaintiff had received the necessary releases from the other eligible purchasers.

251. The Second CCAS agreement included language indicating that this option agreement was related to the purchase of 47 Maple Street.

252. As the option referenced above regarded property not owned by the plaintiff and the plaintiff was concerned about signing an agreement to sell lots he did not yet own.

253. Greenwood reassured the plaintiff he would draft a proper agreement between the plaintiff and CCAS regarding CCAS obtaining the above referenced option.

254. Greenwood did not draft a proper agreement as there was no consideration for the Second CCAS agreement.

255. The defendant's were gathering all of Ahmed's property into their tightly woven web of fraud and deceit; the plaintiff was completely entangled, he had no chance.

Mortgage Guarantee & Title Co.

An Integral Player in the Defendants' Scheme

WILLFUL NEGLECT ⊛ NEGLIGENCE ⊛ CONSPIRACY TO DEFRAUD

256. On December 27, 1988, Loft wrote to MGT and retained them to place a lien to secure CCAS's $25,000 non-refundable deposit *(See: Exhibit _____)*.

257. The CCAS agreement never afforded Loft the right to secure the non-refundable deposit.

258. MGT neither discovered nor disclosed they did discover the recorded Larson PSA filed which had been filed on 12/19/88.

259. MGT is liable for fraud, and/or negligence to its client; however, MGT's failure served the defendants' scheme to defraud the plaintiff.

260. MGT perpetuated, aided, and abetted the defendants' scheme to defraud the plaintiff by slandering the title of 47 Maple Street when it placed a lien by recording the CCAS agreement against the plaintiff's property on May 25, 1989, as more fully referenced below.

The Defendants' "Sweeten the Pot"

261. In a letter dated March 9, 1989, Smith wrote to Greenwood indicating a rejection of the return of the $5,000 Larson deposit, as referenced above.

262. In the above referenced letter from Smith to Greenwood, Smith states Greenwood "mistakenly believes he can abandon his duty as escrow agent without a mutual release from both parties [and that smith's] office will hold in escrow the $5,000 check payable to Larson pending the resolution of the litigation." *(Note: The Ping-Pong game of "who's got the check" continues between Greenwood and Smith.)*

263. On or about March 8, 1989 Loft and the plaintiff met in Greenwood's office whereupon Loft gave the

plaintiff $30,000 "earnest money" towards the purchase of 47 Maple Street.

264. Earnest money is usually a unilateral exchange without any return obligation on the recipient.

265. Technically the Loft deal was supposed to close on March 1, 1989; it did not.

266. As a result of the above failure of CCAS to close on March 1, 1989 as required in the CCAS agreement, CCAS forfeited its non-refundable deposit.

267. The plaintiff was unaware of his legal rights regarding the CCAS agreement as he was "kept in the dark" by his attorney, Greenwood.

268. When the above referenced "earnest money" was tended to him, the plaintiff was not advised of the meaning of the term and did not know the earnest money was being tended to him based upon an already expired contract.

269. The defendants knew the plaintiff did not know the CCAS agreement had expired and that the plaintiff did not understand the term "earnest money", and intended to deceive him.

270. Loft and Greenwood subtly convinced the plaintiff to use all moneys proffered to him to make home improvements on his intended residence: 38 Maple Street.

271. One of the improvements the plaintiff was making was the construction of an addition to the building which would greatly enhance its value.

272. The defendants intended to obtain, as part of their scheme to defraud the plaintiff, all the plaintiff's property and, thereby, the defendants would benefit from the improvements the plaintiff was making; therefore, the moneys given the plaintiff were really being invested in the defendants' investment, and the plaintiff was not intended to benefit by the receipt of these moneys.

BY MARCH 1, 1989 MGT KNEW THAT THE TIME FOR CLOSING PASSED;
MGT IS NOT INNOCENT; MGT SAID NOTHING.

273. MGT is a professional title search company, and, as such, is supposed to discover not only encumbrances on titles, but also improprieties and inconsistencies.

274. MGT clearly failed to discover the recorded Larson agreement.

275. MGT's failure referenced above was intentional and occurred as a result of, and for the benefit of, the defendants' scheme to defraud the plaintiff of his real estate holdings.

276. On March 14, 1989, the plaintiff appeared for the closing at MGT *(See: Exhibit _____)* without the benefit of counsel (although the plaintiff's counsel, Greenwood, was supposed to be present and had assured the plaintiff that he would be present).

277. At the above referenced closing, the plaintiff sold the 47 Maple Street property to Loft personally and not to

CCAS. *(Note: Theoretically CCAS would have a separate cause of action against the plaintiff if Loft had caused any harm to CCAS by violating his agency status. This would appear to be the defendants' back-up plan in their scheme to defraud the plaintiff of his real estate holdings.)*

278. The plaintiff executed the deed, but was told to come back on March 16, 1989 to receive a check for the proceeds of the sale. No reason was given for this two day delay.

279. No language in the CCAS agreement stated March 14, 1989 would be the closing date, and there is a discrepancy between the closing statement and the date on which the defendants claim the closing took place. *(See: Exhibit _____)*

280. On March 13, 1989, the defendants all received the Notice of Lis Pendens, which was actually recorded on March 15, 1989, and are motivated to postpone the closing scheduled for 3/14/89 until 3/16/89.

281. The plaintiff did not learn of Larson's intent to enforce the Larson PSA until March 16, 1989; however, Greenwood was aware of said intent since Dec. 16 letter smith to Greenwood in re suit to enforce PSA.

282. On or about March 15, 1989, Larson recorded a Notice of Lis Pendens with the Land Evidence Records of the City of Providence. *(See: Exhibit _____)*

283. MGT purposefully stated that March 16, 1989 was the closing (so that the plaintiff's interests would be adversely affected) and that since Larson had filed a Lis

Pendens against the property they could not give the plaintiff his check from the proceeds of the sale.

284. The deliberate and unnecessary delay, from March 14 to March 16, 1989, afforded Larson the opportunity to file a Notice of Lis Pendens on March 15, 1989.

285. The defendants knew of the Notice of Lis Pendens dated March 13, 1989, and purposely delayed the March 14, 1989 closing to ensure that it would be recorded, thereby creating the cloud on the title as referenced above in this pleading.

286. On or about March 18, 1989, Larson filed suit against the plaintiff (Providence Superior Court action Larson vs. Ahmed).

287. The plaintiff should not have been induced to sign the mortgage deed in the absence of proper payment to him of all proceeds from the sale.

288. The ruse which took place in the offices of MGT on March 14, 1989, enabled the defendants to cry foul and to exploit the advantage they held over the plaintiff, thereby stalling the closing.

289. The defendants' did not intend to transfer further moneys to the plaintiff, and had no intention of closing on the subject property.

290. In all likelihood voluminous mail and wire fraud were occurring at this time in order for the plaintiff's to coordinate their actions.

291. The defendants induced the plaintiff to return to Rhode Island from his trip abroad to participate in this fraudulent closing.

292. Greenwood telephoned the plaintiff to inform him of the closing date, and said action clearly constitutes wire fraud in the conduction of interstate and foreign commerce.

Loft was not a Ready, Willing, and Able buyer Anyway!

293. Loft presented no proof to the plaintiff during the closing of March 14, 1989, that he had actually obtained financing, or had the ability to buy the property outright.

294. Loft alludes to the fact, in his deposition, that he presented a false appraisal to a financial institution regarding 47 Maple Street, and that said appraisal overstated the value of the property by $45,000. *(See: Exhibit _____, Loft deposition).*

295. Loft furthers states in the above referenced deposition that the appraisal was for "financing" purposes only - or words to that effect.

296. This appraisal valued the property at $165,000 while Loft admits it was worth only $120-$125,000.

297. Loft over-inflated the value to defraud his own lending institution. He did so for the purpose of obtaining the highest financing possible. *(Compare the relative ease by which Loft was supposedly able to obtain financing while Larson supposedly could not obtain financing).*

298. If Loft did submit the above referenced appraisal to a financial institution, he did so in an effort to defraud the financial institution into providing greater financing than they would have otherwise provided had the appraisal been accurate.

299. The plaintiff returned to MGT on March 16, 1989 and was told that he would not be receiving the check for the proceeds from the closing because MGT had discovered the Notice of Lis Pendens.

300. If the closing had taken place on March 14th as scheduled, then the Larson lien, filed on March 15th, could not have affected the title to the subject property. The new owner (Loft/CCAS) would have taken title subject to the Larson lien, and the plaintiff would have been unaffected.

301. The defendants, having failed to record the Larson Lis Pendens prior to the closing scheduled for March 14th (for whatever reason unknown to the plaintiff), found it necessary to delay the closing until the Notice of Lis Pendens could be recorded. This last-minute maneuver further protected the defendants' activity, effectively prohibiting any transfer of the plaintiff's property until they had encumbered and/or acquired **all** the defendant's properties.

302. Since March 1, 1989, was the deadline for the closing as set forth by the December 16, 1988 PSA (which, as referenced above, specifically stated "time" was "of the essence"). When the time allotted for closing had expired, the defendants forged and recorded, a fraudulently created and altered PSA on May 25, 1989 which was, in fact, a photo-copy of the original PSA.

303. The fraudulently created PSA contained an extension clause, in a different type face than that of the body text.

304. The fraudulently created and recorded PSA contained an inserted clause at the bottom, in a different font than the "dot matrix" font of the rest of the document, which purports to extend the validity of the PSA until August 1, 1989.

305. This extension clause contains the forged signature of the plaintiff. *(See: Exhibit _____)*

Defendants' Act on Their Fraud

306. The defendants record, on May 25, 1989 the fraudulently created PSA.

307. The fraudulent PSA referenced above, was sent through the mail to interested parties and constitutes acts of mail fraud.

308. Strangely the March 14, 1989 deed executed by the plaintiff was NEVER recorded, whereas the fraudulently created PSA was recorded.

309. The document recorded on May 25, 1989 has been purported by the defendants to be the PSA executed on December 16, 1988; however, it could not have been the original PSA.

310. Regarding the Loft deposition of March 17, 1994:

a) Loft states in his deposition that the extension clause was inserted at the time of

the original signing on December 16, 1988; however, when shown a copy of the original PSA during the deposition,

b) Loft could not explain why said copy did NOT contain the typed-in extension clause,

c) Loft could not produce the original of the PSA with the extension clause containing the alleged forgery of the plaintiff's signature. *(See: Loft Dep.)*

d) It was ascertained that Loft had, in his possession at all times, the original PSA that did NOT contain the forgery. *(See: Loft Dep. Pgs. 17-18)*, an obvious disparity from the document that the defendants have always proffered as THE ONE AND ONLY PSA.

e) Loft's attorney, McElroy, mistakenly betrayed the fact that Loft had two inconsistent documents in his possession *(See: Loft Dep. Pgs. 17-18)*.

311. The parties supposedly agreed to extend the time for performance until August 1, 1989; however, ¶ 13 of the PSA specifically provides 75 days (from 12/16/88) as the time allotted for closing.

312. These contract clauses are inconsistent on their face, and as time was "of the essence" the closing time, as referenced in the body of the agreement, cannot be ignored

without the contract becoming void. *(See: Exhibit _____, CCAS agreement)*

313. In any event, the plaintiff's signature on the extension clause is a forgery, as the plaintiff did not sign the document twice, nor did he sign another version of the document later.

314. Ahmed never realized this forged document existed until much later.

315. CCAS discharged the plaintiff under this supposed obligation on 6/4/93. This contradicts the fact that it was Loft to whom the plaintiff conveyed the deed on March 16, 1989 - albeit fraudulently conveyed as it was. The plaintiff was never aware of, or notified of, this discharge, nor made aware of the discrepancies regarding to whom he had attempted to convey title on March 14, 1989 (Loft or CCAS?) *(See: Exhibit _____, Loft Dep. pg. 33-36)*

316. The plaintiff only wanted to sell 47 Maple Street, and did not care to whom he sold the property.

317. Loft was very evasive regarding the plaintiff's signature on the extension clause (See Loft dep. pg. 24-25).

318. This extension allowed the defendants time to perfect their encumbrances of the plaintiff's valuable real estate holdings, which they effectively did on July 12, 1989.

The Defendants Complete their Encumbrances of the Plaintiff's Properties

THE JULY 12, 1989 TRANSACTION WAS THE FINAL LURE

319. The plaintiff was contacted by Greenwood while he was out-of-state and told to return to execute fraudulent promissory notes. *(Interstate wire fraud)*

320. To the best of the plaintiff's knowledge, information, or belief, MGT's involvement with this transaction derives from the fact they received the executed notes procured by fraud from Loft. *(mail fraud)*

321. The three promissory notes signed July 12, 1989 had varying terms, different effective dates, and ambiguous due dates.

322. The notes contain neither "sums certain", nor "dates certain".

323. Since the notes contain neither "sums certain", nor "dates certain" they are non-negotiable as commercial paper according to the Uniform Commercial Code.

324. The three promissory notes were transferred through the mail to all interested parties, and said action constitutes mail fraud.

325. The principal amount of Note One was $25,000, and had an effective date of March 16, 1989. Note One was due "in one payment upon the earlier of the following: (1) the cancellation of this note due to the purchase of 47 Maple Street, Providence, Rhode Island, by payee and/or his agents or (2) the final resolution by way of trial, appeal or negotiation of the matter known as Larson vs. Ahmed, Rhode Island Superior Court No. 89-1353 and the closing

on the real estate which is the subject matter of said litigation".

326. There was no consideration for Note One.

327. Since there was no consideration for Note One, said note is defective and invalid.

328. Note Two had a principal amount of $ 30,000 and had an "effective date" of March 16, 1989.

329. Note Two was " to be paid in two payments as follows: (1) Twenty Thousand Dollars ($20,000) upon the sale of any parcel of real estate securing this loan or the passage of two years from the date of signing of this Note, whichever occurs first, and (2) the balance upon the final resolution by way of trial, appeal or negotiation of the matter known as Larson vs. Ahmed, Rhode Island Superior Court No. 89-1353 and the closing on the real estate which is the subject matter of said litigation".

330. There was no consideration for Note Two.

331. Since there was no consideration for Note Two, said note is defective and invalid.

332. The principal amount of Note Three was $30,000 and the effective date of said Note was July 12, 1989.

333. Note Three was due "in one payment upon the earlier of the following " in one payment upon the earlier of the following: (1) the sale of any parcel of real estate securing this loan, or (2) the final resolution of way of trial, appeal or negotiation of the matter known as Larson vs. Ahmed, Rhode Island Superior Court No. 89-1353 and the

closing on the real estate which is the subject matter of said litigation, or (3) July 12, 1991".

334. The three notes, which carried 13.1 % interest, were supposedly drafted in order to secure $85,000 which CCAS had given the plaintiff.

335. The notes were secured by a "blanket" mortgage deed which covered properties valued at approximately $500,000, at the time. (47 Maple Street alone was valued approximately at $120,000.)

336. Were Loft to be able to back-out of the CCAS agreement, and follow a course which would lead to foreclosure upon the plaintiff's properties, Loft would receive a windfall.

337. The execution of these notes and mortgage deed violated the "truth and lending" in that the plaintiff was not afforded a "three day right of rescission" as is required by federal law.

338. The execution also violated Rhode Island General Law 9-25.2-25. *(Any transfer of these fraudulent created notes through the mail constitutes mail fraud. When Greenwood misstated facts regarding these notes, he did so by letter.)* (See: Exhibit _____)

339. Each of the three promissory notes contained language allowing the payee to accelerate the payment of the notes in the event the payee felt insecure.

340. The mortgage deed does not state that it is granted subject to any encumbrances, specifically, Larson's purchase

and sales agreement and Lis Pendens, and CCAS's purchase and sales agreement and its advance of $85,000.

341. The effect of the "blanket" mortgage deed was to cause to be placed a lien on each of the plaintiff's houses in the amount of Eighty-Five thousand Dollars ($85 000), plus interest.

342. The Mortgage Deed was recorded on July 13, 1989, by Greenwood the next day, who was acting on behalf of Loft when he recorded the instruments.

343. Ahmed never understood the full effect and consequences of this entirely inappropriate transaction.

344. When Ahmed was in Greenwood's office on July 12, 1989, Greenwood rushed Ahmed into signing these documents without any explanation as to the legal consequence of said documents. Ahmed had no financial means by which to pay back on the notes; no bank would grant him a loan and he could not sell his properties-these properties would be foreclosed upon eventually.

345. When Ahmed was in Greenwood's office on July 12, 1989, Greenwood stated that he was in a hurry because he had to go pick up his son.

346. When Ahmed was in Greenwood's office on July 12, 1989, and was asked to sign said documents, Greenwood promised copies and a full explanation "tomorrow".

347. Greenwood notarized Ahmed's signature on the promissory notes and mortgage deed.

348. Ahmed never received copies of said promissory notes and mortgage deed until he retained new counsel and received his file from Greenwood sometime after 1991.

349. Greenwood down played this whole matter and suggested to Mary Lisi (Disciplinary Counsel) that Ahmed made these arrangements himself directly with Loft because he was "desperate for money" and that he merely prepared the documents for 'no charge'. *(See: Exhibit _____) (The Disciplinary Counsel did not realize the inconsistencies on Greenwood's statement.)*

350. Greenwood also stated that he never got involved with Ahmed , Loft or Larson; *(See: Exhibit _____)*; yet he was secretly representing Loft as his lawyer in other legal matters at the same time he was representing Ahmed. The plaintiff was not aware of this conflict of interest. *(again another misstatement made by Greenwood not realized by the DC).*

351. None of the notes or deed made reference to the 12/16/88 PSA (still believed to be enforceable at that time) which extended the time for performance to August 1, 1989 (albeit inserted unto the PSA by fraud).

352. There was no need to have the promissory notes executed on July 12, 1989, if the CCAS agreement recorded with the City of Providence was an enforceable contract, as Loft claimed it to be in his deposition.

353. There was no language in the notes that addressed as to whether or not performance by August 1, 1989 on the CCAS agreement voided the notes.

354. The language was not only ambiguous but also illusory and one sided. It was totally devoid of consideration for Ahmed. He could not have understood this arrangement clearly, or he would not have entered into it. Loft and Greenwood had successfully made the plaintiff feel as though he was in the wrong *(See Loft dep. Pg. 10, 13-19).*

355. Ahmed was paid $30,000 by the defendants on July 12, 1989 as the final lure to unduly coerce him into acting for their benefit.

356. The defendants knew they had Ahmed in a vulnerable position and they took complete advantage of him. He had already received $55,000 (which he put back into THEIR investment), but the defendants made the plaintiff feel that he owed Loft security; therefore, they told the plaintiff the notes "receipts", and the plaintiff believe his attorney, Greenwood.

357. Ahmed did not realize that Loft had already breached the PSA and that he could keep all the moneys paid to him, by right. Ahmed felt guilty; therefore, he signed the receipts.

358. The Larson problem was a minor technicality that was blown out of proportion on purpose by the defendants in furtherance of their scheme to defraud the plaintiff.

359. The defendants assured the plaintiff the Larson matter would be resolved in "two weeks", and the CCAS agreement would proceed as planned.

360. Greenwood continuously reassured the plaintiff of the propriety of this action (he notarized the execution of

the notes) even though the transaction was entirely improper.

361. Both Greenwood and Loft knew at the time that the plaintiff had no financial ability to pay notes and would have no ability to obtain financing to do so as a result of the lien which they were going to (and did) place.

Development Plans Change

Defendants Begin to "Worm" their Way Out

362. The defendants really didn't need to acquire this property any longer, since they had already secured liens and encumbrances embracing all of the plaintiff's property. The defendants could have ultimately forced the plaintiff to capitulate and to sell the property to them for next to nothing, in the alternative, to actually foreclose on the fraudulent promissory notes. The defendants' interest in actually acquiring the property at this point had become nil once the plans for the plaintiff property had waned and diminished: the projects planned for the plaintiff's property had fallen through.

363. In the matter of Larson vs. Ahmed, in which Larson sued for "specific performance", Larson prevailed; however, he settled for money damages which had a much lesser value than the property. Although the verdict was in his favor, Larson did not attempt to force the plaintiff to sell him the property.

364. Larson never wanted the property to begin with; his motivation for bringing the action was to merely thwart the culmination of the Loft PSA in order to provide the defendants the opportunity to "back-out" of the CCAS agreement if the defendants found it necessary, for whatever reason (as they did), to do so.

365. The defendants' task then became one of extricating themselves from the CCAS agreement while causing themselves as little loss as possible, or to acquire all of the plaintiff's property for much less than its fair market value.

366. The defendants knew the plaintiff could not refinance and pay-off the liens because no financial institution would lend funds against any of the plaintiff's properties as a result of the degree to which said properties were already encumbered.

367. Furthermore, the defendants knew the plaintiff did not personally have the funds to pay-off the liens, nor could he sell any single parcel to pay-off the liens because he could not provide good title as a result of the liens.

368. As a result of the above referenced knowledge, the defendants knew they would be able to proceed with their scheme to defraud the plaintiff of his properties, and the plaintiff found himself "trapped" by the defendants.

Demands for Payments & Subsequent Attempts to Foreclose

369. Sometime in August 1990, Greenwood notified the plaintiff that Loft/CCAS was no longer interested in purchasing 47 Maple Street.

370. Also on or about August 1990, Greenwood told the plaintiff he had to pay Loft $20,000 on the promissory notes.

371. As more fully referenced above, Greenwood had not given the plaintiff copies of the notes; therefore, the plaintiff relied upon his attorney's advice and attempted to make payment.

372. The plaintiff attempted to obtain an equity loan against one or more of his properties in order to make a payment against the notes; however, was unable to do so as a result of the defendants' liens placed against all of his properties.

373. In the Loft deposition, Loft states, at or about this time, that a financial institution forwarded to him a conditional release which was necessary in order for said institution to lend the plaintiff the funds.

374. Loft did not sign and return the aforementioned release; therefore, the financial institution refused to lend the plaintiff any funds.

375. After Greenwood learned that Loft/CCAS was no longer interested in purchasing the property, Greenwood attempted to enforce the Larson agreement which Greenwood had earlier declared to be "null and void" - or words to that effect.

376. In a letter dated August 10, 1990, Smith writes Greenwood confirming, and rejecting, the plaintiff's offer, proffered by Greenwood, to sell to Larson 47 Maple Street for $153,000, stating that Larson is willing to purchase the property for $120,000.

377. The above referenced letter from Smith suggests that Larson would be willing to release all claims against the plaintiff in exchange for $20,000 from the plaintiff.

378. The defendants knew the plaintiff had been unable to obtain $20,000 in order to pay-off a portion of the Loft lien, and the above referenced suggestion, sent through the mail, from smith was merely one more attempt by the defendants to defraud the plaintiff. (Mail fraud established)

379. In a letter dated August 20, 1990, Greenwood writes to Smith and rejects Smith's offer and counter-offers to sell the property to Larson for $125,000.

380. The plaintiff is not informed of the above referenced letters at the time and learns of them only years later upon obtaining his file.

381. In a letter dated October 16, 1990, Smith writes Greenwood suggesting that a meeting be scheduled between the parties, including CCAS, to discuss the matter, and Greenwood replies in a letter dated October 23, 1990 offering to sell the property to Larson for $120,000.

382. In a letter dated November 5, 1990, Greenwood writes Smith stating that he has received no reply to the October 23, 1990 letter.

383. Smith replies to Greenwood's letter on November 27, 1990 stating he is pleased the plaintiff has agreed to sell the property to Larson; however, Larson was seeking various credits and set-offs from the plaintiff as a result of the plaintiff's [alleged] breach.

1991 - The Plaintiff Begins to "See the Light"

384. The plaintiff seeking new counsel, on or about July 19, 1991 engages Alfred Thibodeau, hereinafter referred to as "Thibodeau".

385. On or about July 23, 1991, Loft/CCAS wrote to the plaintiff demanding full payment on one of the notes plus $7,669 in interest.

386. On July 23, 1991, the above referenced note was unmatured, yet all the defendants treated it as valid and exerted pressure and coercion on the the plaintiff to pay it.

387. On July 23, 1991, Loft /CCAS wrote the plaintiff demanding payment of Note Two, together with $9,203 in interest.

388. On July 23, 1991 only $20,000 of Note Two was matured.

389. On July 23, 1991, Loft/CCAS wrote the plaintiff demanding full principal and interest on Note Three.

390. Loft's/CCAS demand letters to the plaintiff dated July 23, 1991 indicate that he sent a copy of those letters to Greenwood.

391. The private mortgage held by Loft was void/or voidable for reasons referenced above, and since they were procured by fraud, any mailing of any demands for mayment regarding them constitutes mail fraud.

392. Greenwood knew that at some time on a date uncertain, the plaintiff was aware that $20,000 had to be paid to Loft in July 1991 on Note Two.

393. Greenwood knew that some time prior to July 1991, Ahmed tried to obtain an equity loan against one of his properties to pay said $20,000.

394. Greenwood knew that it was when the plaintiff tried to obtain said equity loan that he learned that each of his properties had a mortgage against it for $85,000, and that he would not be able to obtain said loan. Given the effect of the mortgage, Ahmed was unable to obtain an equity loan to pay Loft the $20,000 on Note Two.

Plaintiff Suspects Foul Play

395. On July 23, 1991, Loft/CCAS wrote the plaintiff and demanded payment in full for both principal and interest on all three notes. Copies of the letters were sent to Greenwood and significant others. *(Mail fraud based on extortionary request).*

396. Loft did not want the 47 Maple Street dwelling, as he already had an effective strangle-hold on all the plaintiff's properties.

397. In a letter dated October 29, 1991, Michael McElroy ("McElroy"), attorney for Loft , notified the plaintiff that his three properties located at 38, 42, and 47 Maple Street would be sold at a foreclosure sale on December 17, 1991.

FORECLOSURE PROCEEDINGS ARE IMMINENT.

398. In a letter dated November 15, 1991 to the Providence Journal Bulletin classified department, McElroy orders the notice of foreclosure sale of Ahmed's properties scheduled for December 1991, to appear in said newspaper on November 25, December 2nd, 9th and 16th, 1991.

399. On November 22, 1991, the plaintiff prepares a motion requesting a temporary restraining order to prevent the foreclosure sale of his three properties scheduled for December 17, 1991.

400. After the November 1991 hearing wherein the plaintiff was unsuccessful in obtaining a temporary restraining order to prevent the foreclosure, the plaintiff was advised by Thibodeau to file for protection under Chapter 13 of the Bankruptcy Code.

401. Thibodeau files a chapter 13 petition on the plaintiff's behalf in late November or early December, 1991.

402. In a letter dated December 13, 1991, Smith writes Thibodeau indicating Larson's willingness to purchase 47 Maple Street.

LARSON EXPLOITS AHMED'S BELIEF THAT HIS PROPERTIES "TIED-UP"

403. On December 19, 1991 an order is entered denying the plaintiff's request to add Loft as a third party defendant in the Superior Court action, Larson vs. Ahmed, No. 89-1353.

404. On or about March 26, 1992, Thibodeau files a bankruptcy case, Ahmed vs. Loft, A.P. No. 92-1040.

405. In a letter dated may 6, 1992 from a Ms. Bettez of Thibodeau's office, hereinafter referred to as "Bettez", to Smith, Bettez states that the plaintiff is prepared to convey 47 Maple Street to Larson for $120,000 and asks Smith to call her to discuss set-offs and a closing date.

406. The plaintiff was not able to sell 47 Maple Street to Larson because Loft again insisted that he wanted to buy the property.

407. Loft took the action referenced above in order to purposely exacerbate the situation in an effort to prevent resolution of the matter.

408. Larson and Loft, with Greenwood's assistance, "tied" Ahmed's properties in "knots" in order to serve the purpose of this scheme.

409. Fraudulent appraisals were submitted to the bankruptcy court in the above referenced action regarding the plaintiff's properties.

410. The first appraisal, commissioned by the defendants, valued the plaintiff's properties at a combined value of only $75,000 - which made him ineligible for reorganization of debt, as his debt to Loft/CCAS was $85,000 plus interest and costs for a total of $130,000.

411. The plaintiff's attorney solicited another appraisal which valued the properties at approximately $135,000 - which also made the plaintiff ineligible for reorganization of his debt.

412. The plaintiff never received any documentation of either appraisal, and no documentation regarding said appraisals was in his file when he received it from Thibodeau.

413. It is the plaintiff's contention said appraisals were "bogus", and clearly they had to be - as each of the plaintiff's properties contain three rental units, and each rents for at least $350 per month, for an aggregate total of $3,150 per month. Two of the properties are zoned for five units and the plaintiff had, in fact, begun construction on said additional units.

Defendant's Underestimate Plaintiff's Resolve

The Plaintiff Begins to Take Action to Protect Himself & Correct the Injustice

The plaintiff eventually out-lasts the defendants causing them to abandon their scheme to seize and develop his properties.

414. On or about August 18, 1992, Thibodeau and McElroy stipulate to a dismissal of the plaintiff's adversary proceeding against Loft, without prejudice.

415. Pursuant to three letters dated October 29, 1992, McElroy writes the plaintiff and states that his three properties will be sold at a foreclosure sale on December 17, 1992.

416. The above referenced letters were sent through the mail in furtherance of the defendants' scheme to defraud the plaintiff and, as such, constitute acts of mail fraud as defined by law.

417. In two letters dated October 30, 1992, Bettez writes the plaintiff and notifies him that his bankruptcy petition was dismissed on October 29, 1992 pursuant to the trustee's motion to dismiss.

418. In a letter dated November 3, 1992, Bettez suggests that the plaintiff's suit for specific performance and anticipatory breach against CCAS be re-instituted.

419. By approximately November 15, 1992, when Loft did not notify the Providence Journal to advertise the foreclosure sale as required by law, Loft knew the foreclosure sale would not take place.

420. Loft took no action to inform the plaintiff that the foreclosure sale was not going to take place as scheduled on December 17, 1992.

The Plaintiff's Pro Se Battle Begins

421. The plaintiff filed suit (Providence Superior Court: C. A. No.: 92-6826) against Loft which included a request for a temporary restraining order, pro se, in order to prevent the anticipated foreclosure of his properties.

422. During all the on-going procedural battles, the plaintiff kept arguing substantively because he did not know the rules; hence, his pleadings fell on "deaf ears" by those who perceived him as just another rambling pro se litigant.

423. The plaintiff appears pro se (92-6826) before Judge Gagnon and is able to avert the foreclosure sale allegedly scheduled for December 17, 1992, when the court learns the sale was never advertised by Loft, as required by law.

424. Two orders signed by Judge Gagnon, one submitted by the plaintiff, and a subsequent order submitted by McElroy, have been entered regarding the disposition of the December 1, 1992 hearing on the plaintiff's request for a temporary restraining order.

425. In a letter dated January 15, 1993, Smith notifies the plaintiff that the matter of Larson vs. Ahmed has been scheduled for trial on Thursday, January 28, 1993.

426. The plaintiff's attorney promptly withdraws as counsel.

427. On January 15, 1993, the plaintiff writes to Judge Pfeiffer and asks for an extension of time in the case Larson vs. Ahmed in order to retain new counsel.

428. On or about February 1, 1993, the plaintiff retained counsel, Deeb Sarkas, who, on the date he entered his appearance, asked the court for a continuance so he might

have sufficient time to prepare for trial; however, the court denied the request for an extension and Mr. Sarkis was forced to represent Mr. Ahmed after having reviewed the matter for only a few days.

429. On February 1, 1993, the matter Larson vs. Ahmed was litigated.

430. The jury in the matter Larson vs. Ahmed found that, at the time Mr. Larson filed his PSA with he City of Providence, he believed he had a valid agreement.

431. During the trial there was no mention as to why Greenwood failed to return the deposit as instructed by the plaintiff on or about October 20, 1988, nor the effect of that failure on the outcome of the proceeding.

Loft Backs-Out of the Scheme

The Rosenblatts Inherit Loft's Ride on the "Night Mare"

432. During negotiations on or about May of 1993, regarding some settlement for moneys advanced by CCAS towards the purchase of 47 Maple Street, Loft assigned the promissory notes and mortgage deed to the Rosenblatts. Whatever consideration the Rosenblatts gave Loft must have been worth at least $85,000.

433. The above referenced negotiations were entered by the plaintiff as a matter of expediency, and he fully intended to file suit for compensation regarding any moneys he had to pay regarding the notes in order to "purchase" some "ease of mind" for himself and his family.

434. The Rosenblatts assumed Loft's rights and responsibilities under the law as assignees.

435. The Rosenblatts immediately threatened all legal remedies, including foreclosure on all the plaintiff's properties, if the plaintiff did not pay the promissory notes, including interest, in the approximate total amount of $130,000.

436. The Rosenblatts knew the plaintiff had no ability to obtain financing and had no funds to pay such a ridiculously exorbitant sum when they demanded payment.

437. Loft clearly states in his deposition that he told the Rosenblatts "everything" regarding the difficulties he was having collecting on the notes; however, the Rosenblatts still acquired the notes even though they were allegedly in default.

438. Having acquired notes which were "in default", the Rosenblatts were not "holders in due course" as defined by law.

439. The above difficulties of Loft notwithstanding, the Rosenblatts knew that, in all likelihood, they would be able to foreclose and obtain all the plaintiff's property for little investment.

The Rosenblatts quickly learn that, although they may have the "tiger by the tail", he has yet to be "de-fanged".

440. The Rosenblatts knew they held valueless notes because the PSA was voided due to the breach of Loft/CCAS and that Loft had forfeited his $25,000 non-

refundable deposit, yet the plaintiff was eventually compelled, **through the use of extortionary means**, to pay-off the notes.

441. The Rosenblatts realized that they were not holders in due course, yet they used undue influence and coercion upon the plaintiff to obtain some form of payment.

442. The Rosenblatts knew their position was weak; however, they attempted to salvage what they could.

443. Whatever Loft said to or did for the Rosenblatts to get them to accept this assignment must have been very pervasive.

The Tide Begins to Turn

The Plaintiff Calls the Rosenblatts' Bluff

444. The plaintiff files Providence Superior Court Action C. A. No.: 94-2229 against the Rosenblatts for Injunctive Relief and Declaratory Judgment.

445. In the above action, the plaintiff's prayer for relief requested the notes be declared null and void for various reasons, and further requested the court grant a temporary restraining order and a preliminary and/or permanent injunction to prevent the Rosenblatts from foreclosing on his properties until the plaintiff's claims against all parties to these transactions can be litigated.

446. The prayer for relief further requested

a) the plaintiff be permitted to consolidate that instant action with C. A. 92-6826, such that

all parties to the transactions which had any legal interest in the disposition regarding the promissory notes and mortgage be given notice of said hearing, and be subject to such orders, judgments, or decrees of this Court,

b) that the Court withhold any ruling as to the validity of the promissory notes pursuant to Rhode Island General Law 19-25.2-25 until all parties whose rights may be affected by such ruling can be notified that plaintiff's claims have been consolidated and be given notice of said hearing, such that any ruling will be applicable to all parties with any legal interest in such ruling, orders, judgments, or decrees, and

c) that the court withhold any ruling as to whether or not the note which represented the $25,000 non-refundable deposit paid to the plaintiff by CCAS, has been forfeited until such times as 94-2229 and 92-6826 are consolidated and interested parties notified of said hearing, such that any ruling will be applicable to all parties with any legal interest in such ruling, orders, judgments, or decrees, (the money belonged to CCAS and not to Loft or the Rosenblatts).

447. Furthermore, the plaintiff's 94-2229 complaint clearly set forth that the acceleration clause in each of the promissory notes violates the Secondary Mortgage Act,, R.I.G.L. 19-25.2-25 (1989 Reenactment), which statute states that:

> "No instrument evidencing or securing a secondary mortgage loan shall contain (a) any acceleration clause under which part or all of the unpaid balance of the obligation not yet matured may be declared due and payable because the holder deems himself or herself to be insecure."

448. The promissory notes contain such a clause and Loft demanded payment early because he thought his position was insecure, and said demand was in DIRECT violation of the above statute.

449. When the relief requested by the plaintiff was denied, the plaintiff filed immediately to the Supreme Court of Rhode Island (foreclosure was imminent at this point). The duty judge refused to act in a timely manner. (Supreme Case No. 95-094)

450. Thereafter, the plaintiff went to the Federal District Court and sought a restraining order to prevent the imminent foreclosure. Judge Pettine refused to hear the matter when he learned from Paul Bogosian, the Rosenblatts' attorney, that the plaintiff had already gone to the Rhode Island Supreme Court and had an action pending there regarding the same matter, thereby preventing the federal court system from having jurisdiction until all state remedies became exhausted; however, the judge did suggest the plaintiff pursue his RICO cause of action.

451. The plaintiff also filed this instant RICO cause of action at the same time, and the Rosenblatts, realizing the plaintiff's determination, settled for a mere $70,000.

452. Notwithstanding the fact that the plaintiff felt the Rosenblatts deserved nothing, and that $70,000 was too great a sum considering what the defendants had done to the plaintiff, the plaintiff agreed (under duress and coercion) to begin payment on the fraudulent notes.

453. The Rosenblatts had had enough of the plaintiff's determination and wanted out. The plaintiff had also contacted the following individuals, agencies, attorneys, et cetera, in order to proclaim and seek relief regarding the actions of the defendants:

a) Rhode Island State Police,

b) Providence Police,

c) Federal Bureau of Investigation,

d) Governor of the State of Rhode Island,

e) Providence Journal,

f) United States Attorney for the District of Rhode Island,

g) Rhode Island Attorney General,

h) Senator Pell,

i) Senator Chaffee,

j) American Civil Liberties Union, and

k) various other private and governmental agencies.

454. The above list had a disconcerting effect upon the Rosenblatts and they were happy to get out.

455. The defendants' scheme to defraud the plaintiff of his real estate had been foiled, but at a heavy cost. The plaintiff had won only a Pyrrhic victory.

The scheme had been foiled but the plaintiff is left impoverished.

456. Malek Ahmed's determination caused this resolution, but he was forced to sell his properties to obtain the necessary sum to pay-off the Rosenblatts. **Nevertheless, the defendants did not obtain the plaintiff's property as they had sought so to do.**

Now the Plaintiff is On the Attack

457. The plaintiff has filed actions in the various courts contesting the despicable actions of the defendants to which the plaintiff has fallen victim, and has requested justice and due relief.

458. The defendants have kept him at bay due to procedural technicality only. They have to win these procedural battles at all cost to prevent the entire truth from coming to light. The defendants have much to lose and they

have used these procedural maneuvers as mere "smoke screens". The defendants stand to lose so much because once the plaintiff's claim reaches public, as it most assuredly will eventually, he will derive great sympathy and the defendants' will suffer.

459. The legal profession stands to suffer an even greater harm by the adverse repercussions resulting from its complete disregard for the injustice the plaintiff has suffered.

460. The courts have REPEATEDLY REFUSED to enforce provisions of the Uniform Commercial Code, the "Truth in Lending" statute, and various Rhode Island state statutes, when these courts supposedly have the DUTY to enforce these rightly enacted laws.

461. Laws such as these were enacted to protect against precisely that which the defendants have done to the plaintiff; it is not right to ignore them.

462. The Rhode Island state statute regarding the acceleration clause referenced above clearly states that, if any such secondary mortgage agreement shall contain words to the effect that the lender may demand payment merely because he feels insecure, then the lender shall be paid NEITHER principal NOR interest. The courts refused to enforce this law.

463. The Uniform Commercial Code clearly states notes without sums and dates certain are defective and may not be enforced, and that assignees of notes transferred when they are in default are not holders in the due course of business, and are not negotiable. The courts refused to enforce this law. *(The Rosenblatts and Loft both hold, make, and*

transfer many such notes during the course of their business and cannot claim theirs was a "private" transaction. In fact, both transact enough such "mortgage" business so as to require them to be licensed by the state as money lenders - but they DEFY the laws with impunity [or perhaps "influence peddling?])

464. The plaintiff has been FORCED to take-up this battle pro se. He did not choose to do so; no one "in their right mind" would; however, in order to fight his battle for Justice, he has had to over-come procedural technicalities which the defendants have used to thwart Justice.

465. In the plaintiff's continuing battle, his only weapon need be THE TRUTH!!!

Summation & Prayer for Relief

WHEREAS,

a) the activities of the defendants in the formation and execution of their scheme to defraud the plaintiff resulted in a most debilitating and ultimately fatal effect upon the plaintiff's efforts to exercise his most fundamental and self-evident right to hold and enjoy the benefits derived from his property,

b) the plaintiff's business activities and day-to-day pleasures of life have also been

completely perverted and interrupted by the defendants heinous acts,

c) the plaintiff has expended an exorbitant sum of money in order to defend his rights and present his claims, and has suffered even greater loss as a result of the time he has wasted, in that he has been prevented from working as a merchant marine by the necessity of court appearances. *(Approx. Three to four times he had to quit his job on ships and return to Rhode Island - from the middle of the Pacific, directly as a result of the defendants actions.)*,

d) as a result of the plaintiff's fight to protect his property rights against the defendants' fraudulent scheme to seize them, the plaintiff's resources have become depleted,

e) the plaintiff's health has suffered immensely directly as a result of the stress under which he has been placed by the defendants concerted and relentless efforts throughout the years as they proceeded with their plan to defraud him,

f) the plaintiff has lost any benefit he may have received as a result of any potential development he had planned for, or any potential sale of, his properties,

g) the plaintiff has wasted thousands upon thousands of dollars and assets on legal fees as a result of the plaintiff's efforts to protect

himself and his family from the defendants fraudulent activity, depriving him of needed funds to preserve and maintain said assets, which resulted in their devaluation,

h) since the plaintiff could not stave-off foreclosure and other legal supplemental preceedings wrongfully implemented by the defendants against him, and was forced to sell his properties, they did sell for much less than they would have had they been properly maintained,

i) the plaintiff has been specifically injured because he had to directly pay sums of money to the defendants as a result of their fraudulent actions undertaken against his property interests,

j) although, as a result of the plaintiff's valiant efforts he was able to prevent the defendants from achieving their goal to obtain total ownership and control of his property, having contested their actions by desperately fighting back, which caused the defendants to finally gave-up *(Loft admits in his deposition that he transferred the notes to the Rosenblatts because it was too "expensive" to fight the plaintiff and "take over" his properties.[See: Exhibit _____])*; However, the price the plaintiff was forced to pay has been too enormous and greatly unjust,

k) the plaintiff has been dispossessed of all ownership of all of the property which he owned in 1986 prior to his dealings with the defendants, and, although the plaintiff would always his the fight in the name of honor was worth it, he must now, in the name of Justice seek recompense for ALL the wrongs which were cast upon him by the defendants,

WHEREAS, the plaintiff proclaims the defendants have committed the following **violations of law** in pursuit of their scheme to defraud him of his real estate holdings.

COUNT ONE

Fraudulent Conveyances, Misrepresentation, and Fraud

466. The plaintiff re-alleges and makes reference to paragraphs one through four hundred sixty five, inclusive, as though fully set forth herein.

467. The defendants have committed fraud, made affirmative misrepresentations, fraudulently conveyed the plaintiff's properties, violated the Truth in Lending Law and R.I.G.L. § 19-25.2-2 as set forth in this complaint, causing injury to the plaintiff, and, as such, the defendant is entitled to damages within the meaning of 35 U.S.C. § 284.

COUNT TWO

Violations of 18 U.S.C. § 1961 et seq., § 1962 et seq.,

& 18 U.S.C. §§ 1341 & 1343

468. The plaintiff re-alleges and makes reference to paragraphs one through four hundred seventy-one, inclusive, as though fully set forth herein.

469. The plaintiff is a "person" within the meaning of 18 U.S.C. §§ 1961 (3) and 1964 (c).

470. The defendants Greenwood, Loft, the Rosenblatts, Larson, and participant entities CCAS, and MGT, are "persons" within the meaning of 18 U.S.C. §§ 1961 (3) and 1964 (c).

471. The defendants were engaged in an "enterprise" within the meaning of U.S.C. §§ 1961(4) and 1962(c), which enterprise engaged in, or were associated with, activities, either directly or indirectly, through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1)(B) and 1961(E) and 1961(5).

472. In furtherance of, and for the purpose of executing the scheme and artifice to defraud, the defendants on numerous occasions used and caused to be used mail depositories of the United States Postal Service by both placing, and causing to be placed, mailable matter within said depositories, and by removing, and causing to be removed, mailable matter from said depositories, each use of the mails in connection with the scheme to defraud being an artifice to defraud and to obtain money by false

pretenses, constituting the offense of mail fraud as proscribed and prohibited by the terms and provisions of 18 U.S.C. § 1341.

473. In furtherance of the scheme and artifice to defraud, the defendants on numerous occasions used and caused to be used wire communications in interstate and foreign commerce, by both making and causing to be made telephone calls, facsimile transmissions, and other wire communications, as proscribed and prohibited by the terms and provisions on 18 U.S.C. § 1343.

474. In connection to the activities giving rise to this action, the defendants acted with malice, insult, intent and knowledge, and with a wanton and reckless disregard of the rights and reputation of the plaintiff.

475. In connection with the activities giving rise to this action, defendants conspired with each other, and with others known and unknown, to engage in various activities set forth herein and aided and abetted one another in these activities, all as proscribed and prohibited by the RICO Act under 18 U.S.C. § 1962, et seq.

WHEREFORE, the plaintiff prays:

a) That judgment be entered against defendants Greenwood, Loft, the Rosenblatts, Larson, CCAS, and MGT, jointly and severally,

b) That said judgment be in an undetermined amount not less than Six Million ($6,000,000.00) Dollars upon the several claims for relief and that said sum be duly

trebled in accordance with 18 U.S.C. § 1964(c),

c) That the plaintiff be awarded the costs of suit including reasonable attorney's fees in accordance with 18 U.S.C. § 1964(c),

d) That the defendants be restricted from engaging in any such activities in the future,

e) That the matter be referred to the Disciplinary Council of the Supreme Court of the State of Rhode regarding the improper activities of attorneys,

f) That the matter be referred by the Court to appropriate law enforcement agencies, and

g) Any and all other damages, relief, and pre- and post-judgment interest as the Honorable Court may deem just and proper.

The plaintiff demands trial by a jury of his peers.

The plaintiff reserves the right to amend this amended complaint in the event this matter is remanded to the District Court.

Respectfully Submitted

by Plaintiff's attorney,

/s/ Kevin McBurney

Kevin McBurney

1923 Post Road, Suite B

Warwick, RI 02886

(401) 732-0829

Read, understood and assented to by:

/s/ Malek Ahmed

Malek Ahmed, Plaintiff

CERTIFICATION

I hereby certify that on this _____ day of _____, 1996, I mailed a true copy of this pleading to attorneys for the defendants, Christopher Orton and Melissa Darrigan.

_____

Supreme Court, U.S.
FILED
JAN 15 1998
CLERK

(2)

No. 97-1004

In The

Supreme Court of the United States

October Term, 1997

MALEK AHMED,

Petitioner,

v.

CHARLES GREENWOOD AND
MORTGAGE GUARANTEE AND TITLE COMPANY,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The First Circuit**

RESPONSE OF MORTGAGE GUARANTEE AND TITLE COMPANY TO PETITION FOR WRIT OF CERTIORARI

MELISSA E. DARIGAN
Counsel of Record
Attorney for Respondent
Mortgage Guarantee
and Title Company
PARTRIDGE SNOW & HAHN
180 South Main Street
Providence, RI 02903-7120
(401) 861-8200
(401) 861-8210 Fax

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

23 pp

COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Did the Court of Appeals depart from the accepted and usual course of judicial proceedings or sanction such a departure by the lower court with respect to its review of Petitioner's proposed Amended Complaint?

2. Did the Court of Appeals depart from the accepted and usual course of judicial proceedings or sanction such a departure by the lower court in finding that Petitioner was not entitled to a "second determination" prior to dismissal of his Verified Complaint?

3. Is the decision of the Court of Appeals in conflict with decisions of other federal courts on the same matter?

4. Do Petitioner's claims raise any federal questions warranting review by this Court?

DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Pursuant to Supreme Court Rule 29.6, Mortgage Guarantee discloses all parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates which have issued shares to the public.

Mortgage Guarantee is a wholly owned subsidiary of First American Title Insurance Company of New York, which is a wholly owned subsidiary of First American Financial Corporation. Of these three companies, only First American Financial Corporation has issued shares to the public.

TABLE OF CONTENTS

Page

COUNTERSTATEMENT OF QUESTIONS PRESENTED i

DISCLOSURE STATEMENT PURSUANT TO RULE 29.6 ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 1

A. The Facts 1

B. The Proceedings Below 3

REASONS FOR DENYING THE WRIT 6

I. The Court Of Appeals Applied The Appropriate Standards Of Review To Ahmed's *Pro Se* Verified Complaint And Proposed Amended Complaint 7

II. The Court Of Appeals Properly Analyzed Ahmed's Claims In Accordance With The *Becher* "Second Determination" Principle 10

III. The Court Of Appeals' Decision Does Not Conflict With Any Comparable Decision Of Any Federal Court 12

IV. Ahmed Was Not Denied The Leniency Accorded *Pro Se* Parties 16

CONCLUSION 17

TABLE OF AUTHORITIES

Page

CASES

Burke v. Dowling, 944 F. Supp. 1036 (E.D.N.Y. 1995) 14

Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957) 8

Crowe v. Henry, 115 F.3d 294 (5th Cir. 1997) 15, 16

Feinstein v. Resolution Trust Corp., 942 F.2d 34 (1st Cir. 1991) 12

First America Corp. v. Al-Nahyan, 948 F. Supp. 1107 (D.D.C. 1996).....12, 13

Fleet Credit Corporation v. Sion, 893 F.2d 441 (1st Cir. 1990) 8

In re Harvard Knitwear, Inc., 153 B.R. 617 (Bkrtcy. E.D.N.Y. 1993).....13, 14

Hoult v. Hoult, 57 F.3d 1 (1st Cir. 1995) 9

IUE AFL-CIO Pension Fund v. Herrman, 9 F.3d 1049 (2nd Cir. 1993) 15

Joseph Victori Wines v. Vina Santa Carolina, S.A., 933 F. Supp. 347 (S.D.N.Y. 1996) 13

Miranda v. Ponce Federal Bank, 948 F.2d 41 (1st Cir. 1991)..... 8

New England Data Services, Inc. v. Becher, 829 F.2d 286 (1st Cir. 1987).....5, 6, 10, 11, 12

Rockwell v. Cape Cod Hospital, 26 F.3d 254 (1st Cir. 1994)..... 8

Trustees of Plumber & Pipefitters Nat'l Pension Fund v. De-Con Mechanical Contractors, Inc., 896 F. Supp. 342 (S.D.N.Y. 1995).....14, 15

TABLE OF AUTHORITIES – Continued

Page

RULES

Fed. R. App. P. 10 9

Fed. R. Civ. P. 9(b) 3, 10

Fed. R. Civ. P. 12(b)(1) 3

Fed. R. Civ. P. 12(b)(6) 3, 7, 8, 12, 14, 15

Fed. R. Civ. P. 60(b) 5, 7, 9, 10

STATEMENT OF THE CASE

A. The Facts.

Petitioner, Malek Ahmed ("Ahmed"), alleges that Respondent, Mortgage Guarantee and Title Company ("Mortgage Guarantee"), acted in concert with Respondent, Charles Greenwood ("Greenwood"), and others[1] to defraud Ahmed of real estate owned by him and located on Maple Street in Providence, Rhode Island.

Mortgage Guarantee's entire involvement with Ahmed was limited to the functions of a title insurance company in connection with a real estate sale transaction. In December, 1988, Loft, who was associated with Capital Center, engaged Mortgage Guarantee to perform a title examination of the property located at 47 Maple Street, Providence, Rhode Island (the "Maple Street property"), which Capital Center intended to purchase from Ahmed. In connection therewith, Mortgage Guarantee recorded a purchase and sales agreement between Ahmed and Capital Center. Mortgage Guarantee performed the tasks for which it was hired, gave its findings to Loft, and at Loft's instruction, prepared for the closing of the sale. On March 14, 1989, the closing occurred and the parties to

---

[1] Ahmed claims that Jon and Carol Rosenblatt (the "Rosenblatts"), Irwin Loft ("Loft"), Capital Center Associates Six ("Capital Center") and William Larson ("Larson") participated in the alleged scheme. The only parties to the matter before the Court, however, are Ahmed, Greenwood and Mortgage Guarantee. The Rosenblatts were dismissed by the lower court in April, 1995; Ahmed did not seek further review of the dismissal. Loft, Capital Center and Larson were named in the original pleadings, but were never served and made parties to the action.

the transaction executed and exchanged all necessary documents. When Mortgage Guarantee went to the Registry of Deeds to record the documents, however, it was discovered that Larson had filed a notice of *lis pendens* the day before. Accordingly, Mortgage Guarantee did not record the documents. Mortgage Guarantee notified the parties to the transaction of the *lis pendens*, and the closing was voided. At Loft's request, Mortgage Guarantee recorded a second purchase and sales agreement between Ahmed and Capital Center on May 25, 1989. Thereafter, Mortgage Guarantee had no further involvement with the transaction or the parties to the transaction.[2] Thus, Mortgage Guarantee's involvement with Ahmed was negligible. In fact, Ahmed's original Verified Complaint mentions Mortgage Guarantee only three times, and Mortgage Guarantee is completely uninvolved in any of Ahmed's allegations.

Upon receiving Ahmed's Verified Complaint in February, 1995, Mortgage Guarantee learned for the first time that the dealings between the parties to the March, 1989 transaction with respect to the Maple Street property continued for months after the aborted closing. Mortgage Guarantee also learned from the Verified Complaint that Ahmed executed and delivered three promissory notes to Loft on July 12, 1989, and gave Loft a mortgage on three

---

[2] Mortgage Guarantee never had any direct contractual or other relationship with Ahmed. *See* Transcript of hearing before Magistrate Lovegreen on August 10, 1995, included in Ahmed's addendum to brief in Case No. 96-1145 as item 3, at pp. 11-13. Mortgage Guarantee's only connection to this matter is its contractual relationship with Loft.

properties that he owned on Maple Street as collateral.[3] Finally, Mortgage Guarantee learned in the Verified Complaint that Loft assigned the promissory notes and mortgage to the Rosenblatts, who had thereafter initiated foreclosure proceedings.

The Verified Complaint filed in the lower court is the fifth legal action filed by Ahmed with respect to the events stemming from the aborted closing on March 14, 1989. Mortgage Guarantee was not named as a party nor was involved in any way with the prior actions.

B. The Proceedings Below.

On February 17, 1995, Ahmed filed a *pro se* Verified Complaint in the United States District Court for the District of Rhode Island alleging, *inter alia*, violations of the Federal Truth-in-Lending Act, the Racketeer Influenced and Corrupted Organization Act and the Federal Civil Rights Act. On June 7, 1995, Mortgage Guarantee filed its Motion to Dismiss under Federal Rules of Civil Procedure 12(b)(6), 9(b) and 12(b)(1) on the basis that Ahmed's claims under the Federal Truth-in-Lending Act are barred by the Act's statute of limitations and are inapplicable to Mortgage Guarantee, as Mortgage Guarantee is not a creditor of Ahmed. Similarly, Mortgage Guarantee sought a dismissal of Ahmed's claims under the Racketeer Influenced and Corrupted Organizations Act on the grounds that the claims are time-barred by the Act's statute of limitations and that Ahmed failed to

---

[3] Mortgage Guarantee was not retained by any party for any aspect of this transaction.

establish the requisite statutory elements for a claim under the Act. Mortgage Guarantee also sought dismissal of Ahmed's allegations that Mortgage Guarantee violated the Federal Civil Rights Act on the basis that Ahmed could not allege that the conduct complained of (i) was under the color of state law, nor (ii) that Ahmed was deprived of his constitutional rights. Finally, Mortgage Guarantee sought dismissal of Ahmed's state law claims on the basis of lack of subject matter jurisdiction.[4]

On September 5, 1995, in a thoughtful and well-reasoned opinion, Magistrate Judge Robert W. Lovegreen recommended to the District Court that the Motions to Dismiss of both Mortgage Guarantee and Greenwood be allowed. The Magistrate's Report and Recommendation was adopted by Senior Judge Raymond J. Pettine on November 15, 1995, and an Order of Dismissal issued.

Ahmed appealed the Order of Dismissal, requesting that the First Circuit Court of Appeals vacate the Order and remand the case to the District Court for further proceedings.[5] While the appeal was pending, on June 10, 1996, Ahmed filed with the Court of Appeals a Motion to Amend the original Verified Complaint. By Order dated June 17, 1996, the Court of Appeals denied Ahmed's Motion to Amend, and instructed Ahmed as to the proper procedure for seeking the relief requested. On June 20, 1996, Ahmed filed in the District Court his Motion to

---

[4] Greenwood filed a Motion to Dismiss on April 5, 1995 advancing arguments similar to those presented by Mortgage Guarantee *contra* the Verified Complaint.

[5] Ahmed's appeal was docketed in the Court of Appeals as No. 96-1145.

Reopen, Rehear and Reconsider. On October 1, 1996, Magistrate Lovegreen heard this Motion, which was treated as a Motion to Vacate Judgment pursuant to Fed. R. Civ. P. 60(b). Magistrate Lovegreen delivered a detailed and considered decision from the bench denying Ahmed's Motion. On December 20, 1996, Judge Pettine issued an Order affirming Magistrate Lovegreen's decision. Ahmed appealed the District Court's Order to the Court of Appeals.[6] Following oral argument on May 6, 1997, the Court of Appeals issued a written opinion, dated July 14, 1997, affirming both judgments of the District Court. Ahmed's Petition for Writ of Certiorari to this Court followed.

In his Statement of the Case, Ahmed misrepresents the genesis of his Petition. This matter is not before the Court because the lower courts applied inappropriate standards of review with respect to the Verified Complaint and proposed Amended Complaint. The record below clearly demonstrates that the District Court and Court of Appeals properly reviewed both pleadings and, in doing so, found Ahmed's claims to be utterly lacking in merit. Nor is this matter before the Court because the lower courts erred by not providing Ahmed with a "second determination" as discussed in *New England Data Services, Inc. v. Becher*, 829 F.2d 286 (1st Cir. 1987). As found by the lower courts, Ahmed is not entitled to further relief and this case is entirely distinguishable

---

[6] This second appeal was docketed in the Court of Appeals as No. 97-1037. By Order dated January 13, 1997, both of Ahmed's appeals were consolidated for purposes of oral argument, review and decision.

from *Becher*. Finally, this is not a case where a *pro se* plaintiff received short-thrift from the lower courts, as Ahmed alleges. The record below is replete with references to Ahmed's status as a *pro se* plaintiff: Ahmed's *pro se* status was clearly recognized by the lower courts and the lower courts afforded Ahmed appropriate leniency.

REASONS FOR DENYING THE WRIT

With classic hyperbole, Ahmed contends that the lower courts have "so far departed from the Accepted And Usual Course of Judicial proceedings and the search for truth and justice as to call for an exercise of this Court's power of supervision." (Ahmed's Petition at 2). This is manifestly incorrect. The record below could not be more clear in demonstrating that every judicial authority reviewing this matter properly interpreted Ahmed's claims, applied the controlling case law to the facts that Ahmed alleged, appropriately considered Ahmed's position as a *pro se* party, and issued thorough and well reasoned decisions. That the decisions do not conform to Ahmed's expectations does not give rise to a departure from the accepted and usual course of judicial proceedings requiring this Court's intervention.

Cutting through the rhetoric, inflammatory statements and unjustified conclusions, Ahmed's claims are two-fold: that the lower courts did not properly review the allegations set forth in his proposed Amended Complaint, and that the lower courts failed to afford him a liberal interpretation of the "second determination" principle set forth in *Becher*. Ahmed colors these claims with

allegations that the lower courts failed to accord him sufficient leniency due a *pro se* party.

I. The Court Of Appeals Applied The Appropriate Standards Of Review To Ahmed's *Pro Se* Verified Complaint And Proposed Amended Complaint.

Ahmed's argument vis-a-vis the lower courts' review of his Verified Complaint and proposed Amended Complaint is convoluted and difficult to follow. For clarity, Mortgage Guarantee briefly repeats the history of the two complaints. Ahmed initiated the underlying action in the District Court by filing a *pro se* Verified Complaint. This Complaint was dismissed by the District Court upon motion by Mortgage Guarantee for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Ahmed appealed the dismissal. While that appeal was pending, Ahmed presented an Amended Complaint to the District Court in connection with his Motion to Vacate Judgment pursuant to Fed. R. Civ. P. 60(b). The Motion to Vacate was denied and Ahmed appealed that Order.

In the matter before this Court, Ahmed claims that the lower courts improperly limited their review to the *pro se* Verified Complaint, while ignoring the allegations of the Amended Complaint. Although in making this argument Ahmed fails to distinguish between the two actions of the lower courts (the Rule 12(b)(6) dismissal and the denial of the Rule 60(b) Motion), to evaluate what standard of review the lower courts should utilize with respect to the Amended Complaint, the two rulings must be considered separately.

A. The Verified Complaint.

In considering Ahmed's first appeal (dismissal of his Verified Complaint), the Court of Appeals was required to review the District Court's grant of Mortgage Guarantee's Motion to Dismiss *de novo*, taking Ahmed's allegations as true and making all reasonable inferences in his favor. *Rockwell v. Cape Cod Hospital*, 26 F.3d 254, 255 (lst Cir. 1994). Despite Ahmed's protests, the proposed Amended Complaint is not at all implicated in this review.[7]

Dismissal pursuant to Rule 12(b)(6) is appropriate if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-102, 2 L.Ed.2d 80 (1957); *Rockwell v. Cape Cod Hospital*, 26 F.3d at 260. When deciding a 12(b)(6) motion, the court must "construe the pleadings in the light most favorable to the plaintiff," but "has no duty to 'conjure up unpled allegations' in order to bolster the plaintiff's chances of surviving a 12(b)(6) motion to dismiss." *Fleet Credit Corporation v. Sion*, 893 F.2d 441, 444 (1st Cir. 1990) (citing cases). Moreover, the court "need not credit bold assertions, periphrastic circumlocutions, unsubstantiated conclusions, or outright vituperation." *Miranda v. Ponce Federal Bank*, 948 F.2d 41, 44 (1st Cir. 1991) (citing cases).

Reviewing the decision of the Court of Appeals, it is clear that the Court did, in fact, properly apply the

---

[7] The proposed Amended Complaint was not even presented to the District Court until June, 1996, seven months after dismissal of the Verified Complaint.

requisite tests as set forth in the governing case law. *See* Court of Appeals' opinion, included in Ahmed's Appendix ("App.") at 2, 3, 5-9. Even reading the Verified Complaint in the most liberal and creative manner, the Court of Appeals came to the conclusion that Ahmed failed to plead and allege a valid RICO cause of action. App. 5-7, 12.

Because the proposed Amended Complaint was not part of the record below with respect to Ahmed's appeal of the Verified Complaint's dismissal, the Court of Appeals did not and, indeed, could not consider the Amended Complaint in this context. App. 2-3; Fed. R. App. P. 10. Therefore, with respect to the Court of Appeals' affirmation of the dismissal of Ahmed's Verified Complaint, this Court should find no fault with the Court of Appeals and no cause for supervision.

B. The Amended Complaint.

Ahmed's proposed Amended Complaint is part of the record with respect to his second appeal (the denial of his Rule 60(b) Motion). However, even in this context, the substantive allegations of the Amended Complaint are not properly reviewable by the Court of Appeals. The correct standard of review of the District Court's Order denying the Rule 60(b) Motion is only for an abuse of discretion. App. 10; *Hoult v. Hoult*, 57 F.3d 1, 3 (lst Cir. 1995). The Court of Appeals will find an abuse of discretion only when it is convinced that the District Court committed a clear error of judgment in the decision it reached when weighing all the factors. App. 10-11. Review is limited to the denial of the Motion, not the

merits of the underlying judgment of dismissal. *Id.* As a result, the Court of Appeals did not and could not review the proposed Amended Complaint on the merits as Ahmed requests. Because the Court of Appeals exercised the appropriate standard of review with respect to the lower court's denial of Ahmed's Rule 60(b) Motion, this Court should find no departure from the accepted and usual course of judicial proceedings requiring this Court's supervision.

II. The Court Of Appeals Properly Analyzed Ahmed's Claims In Accordance With The *Becher* "Second Determination" Principle.

Ahmed further claims that prior to dismissal of the Verified Complaint, the District Court should have, *sua sponte*, afforded him an opportunity to conduct discovery and amend the Complaint. He contends that the Court of Appeals' refusal to find in his favor on this issue is a departure from the accepted and usual course of judicial proceedings, thus requiring supervision by this Court. He attempts to bolster this argument by creating a fictional conflict among federal courts.

The "second determination" principle discussed in *Becher* provides that although plaintiffs in a civil RICO case must sufficiently plead the details of a RICO mail and wire fraud charge in accordance with Fed. R. Civ. P. 9(b), dismissal of an action should not be automatic upon a finding that the plaintiff failed to comply with Rule 9(b):

> *[i]n an appropriate case*, where, for example the specific allegations of the plaintiff make it likely

> that the defendant used interstate mail or telecommunications facilities, and the specific information as to use is likely in the exclusive control of the defendant, the court should make a *second* determination as to whether the claim as presented warrants the allowance of discovery and if so, thereafter provide an opportunity to amend the defective complaint.

Becher, 829 F.2d at 290. (emphasis added)

This case is entirely distinguishable from *Becher*. First, the *Becher* plaintiff "clearly set out a general scheme" of actions that could have been intended to defraud and which probably involved interstate commerce. *Id.* at 291. The *Becher* plaintiff failed, however, to plead the predicate acts of mail or wire fraud with sufficient particularity. *Id.* at 292. In contrast, as noted repeatedly in the lower courts' decisions, Ahmed failed sufficiently to plead each of the following requisite elements: specific facts to establish instances of mail and wire fraud, a pattern of racketeering activity, and the existence of an enterprise affecting interstate commerce. App. 5, 7, 14. Accordingly, this case does not present a situation where Ahmed had established all statutory requisites for a viable RICO action, save one. He established none of the requirements. Moreover, the plaintiff in *Becher* repeatedly sought, and was denied, further discovery and an opportunity to amend. Not once did Ahmed pursue discovery with respect to any defendant or seek an opportunity to amend his Verified Complaint. Hence, the factors supporting the application of the *Becher* "second determination" principle are not present here.

The record below demonstrates that the Court of Appeals analyzed Ahmed's claims in the context of the *Becher* principle, as clarified by its ruling in *Feinstein v. Resolution Trust Corp.*, 942 F.2d 34 (1st Cir. 1991). In doing so, the Court of Appeals explained that a "second determination" is "neither automatic, nor of right, for every plaintiff" and that Ahmed was simply not entitled to a second determination. App. 8. Accordingly, this Court should not find that the Court of Appeals departed from the accepted and usual course of judicial proceedings.

III. The Court Of Appeals' Decision Does Not Conflict With Any Comparable Decision of Any Federal Court.

In an effort to attract this Court's attention to his claims, Ahmed alleges that the decision of the Court of Appeals conflicts with the decisions of other United States Courts of Appeals and federal courts on the standard for dismissal pursuant to Rule 12(b)(6) motions. (Ahmed's Petition at 9-10). Ahmed cites to three cases in support of this position. None of them are convincing on this point.

In *First America Corp. v. Al-Nahyan*, 948 F. Supp. 1107 (D.D.C. 1996), the United States District Court for the District of Columbia adopted a magistrate judge's recommendation that defendants' motion to dismiss be denied and that plaintiffs be allowed the opportunity to conduct discovery. Without reviewing the magistrate's (unreported) recommendation, it is difficult to discern how Ahmed applies the *Al-Nahyan* case to his argument. The only apparent similarity is that both cases involve civil

RICO claims. Ahmed's bare and conclusory statement that the holding in the *Al-Nahyan* case creates a conflict with the Court of Appeals in this case is not pertinent authority and fails to offer the Court any insight into his argument.

Ahmed's comparison of this case to *Joseph Victori Wines v. Vina Santa Carolina, S.A.*, 933 F. Supp. 347 (S.D.N.Y. 1996) is no more compelling or persuasive. In *Santa Carolina*, the defendant brought a motion under Fed. R. Civ. P. 9(b) seeking dismissal of plaintiff's complaint for failure to plead fraud with particularity. The motion was denied as the court found that the plaintiff had satisfied "several of [the Rule 9(b)] requirements," having set forth the content of alleged misstatements, stating the time and place of some of them, describing how the statements were misleading and explaining what the defendant achieved by the misstatements. *Id.* at 356. Given "these relatively minor deficiencies," and document discovery and witness affidavit testimony that "flushed out" plaintiff's allegations, the court denied the defendant's motion to dismiss. *Id.* In contrast, in this matter, both lower courts found that Ahmed failed to allege *any* facts establishing a civil RICO claim. App. 5-8, 11-12, 14, 16, 24-27. Accordingly, any comparison of the *Santa Carolina* case to the one before this Court is improper.

Ahmed also cites to *In re Harvard Knitwear, Inc.*, 153 B.R. 617 (Bkrtcy. E.D.N.Y. 1993). Frankly, Mortgage Guarantee questions whether Ahmed reviewed the bankruptcy court's decision in that case. In *Harvard Knitwear*, the court made essentially the same findings as did the

Court of Appeals in this matter with respect to allegations that are inadequately pled. The *Harvard Knitware* court held that although some leeway may be afforded a plaintiff in order to provide details of a civil conspiracy, the complaint must nevertheless "contain sufficient information for the court to determine whether or not a valid claim for relief has been stated." *Id.* at 628. The Court of Appeals' decision in this case comports favorably to that standard. Ahmed simply failed to allege anything other than unsubstantiated conclusions and bold assertions. App. 8, 12.

Ahmed further attempts to demonstrate that the Court of Appeals' decision conflicts with decisions of other federal courts by stating that other jurisdictions have permitted minimal pleadings claiming civil RICO violations to survive Rule 12(b)(6) motions. (Ahmed's Petition at 9). Each of the four cases Ahmed cites in support of this argument may be distinguished from this matter. For example, Ahmed relies upon *Burke v. Dowling*, 944 F. Supp. 1036 (E.D.N.Y. 1995) to support his position that as long as a plaintiff demonstrates entitlement to relief, a complaint will survive a motion to dismiss. (Ahmed's Petition at 9). This is a fair representation of one of the holdings in *Burke;* however, unlike Ahmed, the *Burke* plaintiffs stated with particularity the details involved in the alleged RICO violation. *Id.* at 1052, 1056-1060. Ahmed's reliance upon the *Burke* case is misplaced inasmuch as the factual detail supporting the *Burke* plaintiffs' legal claims far exceeded the factual allegations supplied by Ahmed in the Verified Complaint.

Ahmed points to *Trustees of Plumber & Pipefitters Nat'l Pension Fund v. De-Con Mechanical Contractors, Inc.*, 896 F.

Supp. 342 (S.D.N.Y. 1995) as standing for the proposition that "as long as some of the allegations of fraud are adequate [a Rule 12(b)(6)] motion will be denied." (Ahmed's Petition at 9). Stated in a vacuum that may be a correct statement of law; however, the Court must consider the facts of each case in applying this standard. In this regard, the *De-Con Mechanical* case hurts Ahmed's case more than it helps. In *De-Con Mechanical*, the district court's outline of the elements necessary for a plaintiff sufficiently to allege a civil RICO claim mirrors the requirements established by the lower courts in this matter. Applying the applicable test to the *De-Con Mechanical* plaintiffs' claims, the court found that, like Ahmed, the complaint failed to allege sufficiently the underlying facts and circumstances of the claimed RICO activity.

The Second Circuit in *IUE AFL-CIO Pension Fund v. Herrman*, 9 F.3d 1049 (2nd Cir. 1993) reversed the lower court's grant of defendants' motion to dismiss for failure to state a claim. Unlike the findings in this case, however, the Second Circuit expressly found that the pleadings of the *Herrman* plaintiffs contained "[e]verything necessary to ascertain a federal claim." *Id.* at 1058. In this matter, both lower courts specifically found that Ahmed failed to plead even one of the elements required to sustain a claim. App. 5, 14, 24-27. Thus, there can be no comparison between the two cases.

Finally, Ahmed attempts to persuade this Court that the lower courts erred in their rulings and that conflicts exist among the federal courts by citing to *Crowe v. Henry*, 115 F.3d 294 (5th Cir. 1997). In *Crowe*, the plaintiff brought civil RICO claims against his friend and attorney, much as Ahmed has done in this case. That, however, is where the

similarity between the cases ends. In reversing the grant of defendant's summary judgment motion, the Fifth Circuit held that plaintiff had presented sufficient evidence to allow a reasonable trier of fact to accept his interpretation of the facts. *Id.* at 297, 298. The analysis and findings of this case may be distinguished from *Crowe*. Here, the lower courts, after thorough review, found that Ahmed failed to allege any facts supporting his claims. App. 5, 14, 24-27. Therefore, Ahmed's attempted comparison to the *Crowe* case does not succeed.

IV. Ahmed Was Not Denied The Leniency Accorded *Pro Se* Parties.

Ahmed's final basis for seeking review by this Court concerns his contention that he should have been accorded greater leniency due to his *pro se* status. App. 7-8. This argument is simply without merit. The record shows that each judicial authority reviewing this matter recognized Ahmed's status as a *pro se* plaintiff: every decision, written and verbal, expressly notes that Ahmed was proceeding *pro se* and specifically states that his pleadings were therefore liberally construed. App. 9, 14-15, 20; Transcript, addendum to Ahmed's brief in Case No. 97-1037, item 6. As stated by the Court of Appeals, the "judicial system zealously guards the attempts of *pro se* litigants on their own behalf. [The Court is] required to construe liberally a *pro se* complaint. . . . " App. 8-9. Clearly, the lower courts reviewed Ahmed's pleadings taking into account his *pro se* status. However, even after liberally construing Ahmed's Complaint, the courts found that Ahmed had presented no facts to support his

legal claims. *"[P]ro Se* status does not insulate a party from complying with procedural and substantive law." App. 9. Given the repeated references by the lower courts to their efforts to provide Ahmed with a liberal review due to his *pro se* status, this Court should not find fault with the lower courts' ultimate findings that Ahmed failed to state a claim against Mortgage Guarantee.

CONCLUSION

The rulings by two courts, upon reviewing the record, that Respondent Mortgage Guarantee was entitled to judgment as a matter of law do not present an important question of federal law unsettled by this Court, or one in conflict with applicable decisions of other federal courts, or a case calling for the supervision of the Supreme Court of the United States. Accordingly, the Petition should be denied.

Respectfully submitted,

MELISSA E. DARIGAN
Attorney for Respondent
Mortgage Guarantee
and Title Company
PARTRIDGE SNOW & HAHN
180 South Main Street
Providence, RI 02903-7120
(401) 861-8200
(401) 861-8210 Fax

FILED
JAN 16 1998
CLERK

No. 97-1004

In The

Supreme Court of the United States

October Term, 1997

MALEK AHMED,

Petitioner,

v.

CHARLES GREENWOOD and
MORTGAGE GUARANTEE AND TITLE COMPANY,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The First Circuit**

BRIEF OF RESPONDENT CHARLES GREENWOOD IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CHRISTOPHER M. ORTON, Esq.
Counsel of Record
FRANCIS X. FLAHERTY, Esq.
LAW OFFICE FRANCIS X. FLAHERTY
The Summit West, Suite 210B
300 Centerville Road
Warwick, Rhode Island 02886
(401) 737-8700

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

25 pp

TABLE OF CONTENTS

Page

Table of Authorities iii

I. Statement of the Case 1

A. Statement of Procedural History 1

B. Statement of Facts 7

II. Argument 10

A. PLAINTIFF HAS FAILED TO ESTABLISH FOR THE UNITED STATES SUPREME COURT A BASIS UPON WHICH THE COURT COULD RELY IN GRANTING CERTIORARI JURISDICTION 10

B. PLAINTIFF IS MISTAKEN IN HIS BELIEF THAT THE FIRST CIRCUIT COURT OF APPEALS SHOULD HAVE REVIEWED HIS PROPOSED AMENDED COMPLAINT AS THOUGH IT HAD BEEN CONSIDERED BY THE RHODE ISLAND FEDERAL DISTRICT COURT UNDER A RULE 12(b)(6) STANDARD 11

C. THE FIRST CIRCUIT COURT OF APPEAL'S DECISION IN THE UNDERLYING CASE IS NOT IN CONFLICT WITH ANY DECISIONS OF OTHER UNITED STATES COURTS OF APPEAL ON ANY IMPORTANT MATTER AND AS SUCH CANNOT PROVIDE THE PETITIONER WITH GROUNDS FOR GRANT OF WRIT OF CERTIORARI 13

TABLE OF CONTENTS – Continued

Page

D. GREENWOOD OBJECTS TO SECTION III OF PLAINTIFF'S PETITION IN THAT IT CONTAINS MISSTATEMENTS OF FACT AND INAPPROPRIATE FORM..... 17

E. THE ASSERTION IN SECTION III OF PLAINTIFF'S PETITION, THAT THE RHODE ISLAND DISTRICT COURT AND THE FIRST CIRCUIT COURT OF APPEALS COMMITTED ERRONEOUS FACTUAL FINDING, DOES NOT PROVIDE A BASIS UPON WHICH THE UNITED STATES SUPREME COURT COULD RELY IN GRANTING CERTIORARI JURISDICTION 19

III. Conclusion 20

TABLE OF AUTHORITIES

Page

CASES:

Ahmed v. Rosenblatt, et al., 118 F.3d 886 (1st Cir. 1997) 5

Feinstein v. Resolution Trust Corp., 942 F.2d 34 (1st Cir. 1991) 5

First American Corp., et al. v. Sheikh Zayed Bin Sultan Al-Nahyan, et al., 948 F.Supp. 1107 (D.C. 1996) 16

Forsyth v. Hammond, 17 S.Ct. 665, 106 U.S. 506, 41 L.Ed. 1095 (1897) 13

In re: Harvard Knitwear, Inc., 153 B.R. 617 (E.D.N.Y. 1993) 16

Joseph Victori Wines, Inc. v. Vina Santa Carolina S.A., et al., 993 F.Supp. 347 (S.D.N.Y. 1996) 16

Layne & Bowler Corp. v. Western Well Works, Inc., et al., 43 S.Ct. 422, 261 U.S. 387, 67 L.Ed. 712 (1923) 14, 17

New England Data Services, Inc. v. Becher, 829 F.2d 286 (1st Cir. 1987) 5, 15

Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 59 v. Super Line Transportation Company, Inc., 953 F.2d 17 (1st Cir. 1992) 12

STATUTES

18 U.S.C. § 1961 et seq. 1

29 U.S.C. § 636(B)(1) 2

TABLE OF AUTHORITIES – Continued

Page

RULES

F.R.C.P. Rule 12(b)(6) 1, 11, 12, 16, 18

F.R.C.P. Rule 9(b) 1

F.R.C.P. Rule 60(b) 3, 4, 5, 6

F.R.C.P. Rule 60(b)(1) 4

F.R.C.P. Rule 60(b)(6) 4, 6, 11, 12, 13

Sup. Ct. R. 10 .....11, 13, 14, 17, 20

Sup. Ct. R. 10(a)..... 14

I. STATEMENT OF THE CASE

A. Statement of Procedural History.

On or about February 17, 1995 Plaintiff Malek Ahmed (hereinafter "Plaintiff") filed a verified complaint in the United States District Court for the District of Rhode Island.[1] In his complaint, the Plaintiff alleged a violation of the Racketeer Influenced and Corrupt Organizations Act (hereinafter "RICO"), 18 U.S.C. § 1961, et seq., as well as other federal and state law claims. The verified complaint was filed by Plaintiff pro se. It names Defendant Charles Greenwood (hereinafter "Greenwood") and Defendant Mortgage Guarantee and Title Company (hereinafter "MGT") as Defendants. The complaint also named Jon Rosenblatt, Carol Rosenblatt, Irwin Loft, Capitol Center Associates Six, and William Larson as Defendants. Only Greenwood and MGT remain in this action.

Both Greenwood and MGT filed motions to dismiss the Plaintiff's original complaint alleging that it failed to state a claim upon which relief could be granted and that it failed to plead fraud with particularity. See, F.R.C.P. 12(b)(6), 9(b). Those motions were referred to the United States Magistrate Judge Robert W. Lovegreen for report and recommendation to Senior United States District Court Judge Raymond J. Pettine. The Magistrate's report was handed down on September 4, 1995.[2] The recommendation was that each count of the Plaintiff's complaint be dismissed. In reaching that decision, Lovegreen found

---

[1] Pet. App. pgs. 31-43.

[2] Pet. App. pgs. 17-30.

that the Plaintiff's complaint failed to set forth the elements needed to state a cause of action under the Federal RICO Statute.[3]

The Plaintiff, acting pro se, objected to Lovegreen's report and recommendation. Subsequently, Plaintiff retained the services of Attorney Arthur E. Chatfield, III. Attorney Chatfield filed a supplemental objection to the Report and Recommendation on or about October 11, 1995.

Judge Pettine adopted the Magistrate's report and recommendation in its entirety pursuant to 29 U.S.C. § 636(B)(1).[4] Judge Pettine specifically found that the Plaintiff had failed to plead sufficiently specific facts to establish instances of mail and wire fraud, a pattern of racketeering activity, or the existence of an enterprise affecting interstate commerce.[5] The District Court determined that the Plaintiff's original verified complaint failed to adequately plead any of the elements necessary to establish a Federal RICO claim. Judge Pettine ruled that, despite being pro se, the Plaintiff still had the burden of pleading specific facts to back up his claims.[6] Even being afforded the benefit of leniency given to pro se litigants, the Plaintiff failed to meet this burden.[7] Judge Pettine dismissed the Plaintiff's original complaint on November 15, 1997.

---

[3] Pet. App. pgs. 22-27.

[4] Pet. App. pgs. 14-16.

[5] *Id.*

[6] Pet. App. pg. 15.

[7] *Id.*

The Plaintiff appealed the Rhode Island District Court's Dismissal order. That appeal was docketed in the First Circuit Court of Appeals at Appeal No. 96-1145. The Plaintiff filed his brief on June 7, 1996. Immediately thereafter, and prior to Greenwood and MGT submitting their briefs, the Plaintiff filed a motion to amend his complaint, along with a proposed amended complaint, in the First Circuit Court of Appeals.[8] The Plaintiff's motion was denied by the First Circuit.[9] The Defendants filed their briefs opposing Plaintiff's original appeal in September of 1996.

The Plaintiff then filed a motion to vacate his complaint's dismissal in the Rhode Island District Court, claiming relief under each and every subsection of Rule 60(b).[10] Timely objections to the motion were filed by both Defendants.[11] On October 1, 1996 a hearing was held before Magistrate Judge Lovegreen.

The Magistrate heard arguments from all parties. The issue presented to the magistrate was whether or not Plaintiff was entitled to have the order dismissing his complaint vacated under Rule 60(b). The Magistrate issued an order from the bench finding that the Plaintiff had failed to meet the criteria under any of the subsections of the Federal Rule 60(b).[12] The Magistrate recommended denial of the Plaintiff's motion.

---

[8] Pet. App. pg. 10.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

In determining whether Rule 60(b)(6) applied to the Plaintiff's circumstance, the Court reviewed the Plaintiff's proposed amended complaint. The Magistrate found that despite being longer and more detailed than the Plaintiff's original verified complaint, in substance it was the same complaint that had been previously dismissed.[13] As such, Plaintiff had failed to prove to the District Court that he would be able to assert a meritorious claim sounding in RICO. Proof of the existence of a meritorious claim is a pre-condition to the grant of Rule 60(b)(6) relief.[14] In addition, the Magistrate found that the Plaintiff had failed to prove the existence of exceptional circumstances, and that both Greenwood and MGT would be prejudiced by having to assume the burden and expense of defending the case at that point in time.[15] The Plaintiff had failed to meet the preconditions and criteria necessary for relief under Federal Rule of Civil Procedure 60(b)(6) or the other subsections of Rule 60(b).

The Plaintiff objected to the Magistrate's order. The matter was transferred to Judge Pettine for review. On December 20, 1996 Judge Pettine affirmed and approved Magistrate Lovegreen's order.[16] The Plaintiff appealed the denial of Rule 60(b) relief to the First Circuit. The issues asserted in Plaintiff's second appeal were his beliefs that the dismissal of his complaint should have been vacated under Federal Rule 60(b)(1) or 60(b)(6).[17]

---

[13] *Id.*

[14] Pet. App. pg. 12.

[15] Pet. App. pg. 10.

[16] *Id.*

[17] Pet. App. pgs. 10-13.

Plaintiff's second appeal, of Judge Pettine's denial of his Rule 60(b) motion, was docketed in the First Circuit Court of Appeals at Appeal No. 97-1037. Plaintiff's two appeals, 96-1145 and 97-1037, were consolidated for purposes of oral argument. The Appeals Court rendered a decision affirming both the judgments entered by the Rhode Island Federal District Court.[18] That decision, the one which this petition arises out of, is published at *Ahmed v. Rosenblatt, et al.*, 118 F.3d 886 (1st Cir. 1997).

In ruling upon Plaintiff's first appeal, the First Circuit found that the Plaintiff's original verified complaint failed to plead any of the elements needed to establish a RICO claim, including the predicate acts of mail and wire fraud,[19] that the acts were related and posed a continuous threat of criminal activity needed to prove a pattern[20] and the existence of an enterprise.[21] The First Circuit also held that the Plaintiff was not entitled to a 'second determination' under the *Becher* case [22] because there had never at any time been any indication by the Plaintiff that critical information regarding mail and wire fraud was in the sole possession of the Defendants.[23]

On the issue of pro se leniency, the Court found that the policy behind affording that leniency was to protect

---

[18] Pet. App. pgs. 1-13.

[19] Pet. App. pgs. 5-7.

[20] *Id.*

[21] *Id.*

[22] *New England Data Services, Inc. v. Becher*, 829 F.2d 286 (1st Cir. 1987); *Feinstein v. Resolution Trust Corp.*, 942 F.2d 34 (1st Cir. 1991).

[23] Pet. App. pgs. 7-8.

the pro se party who had pled sufficient facts but the incorrect cause of action.[24] In that situation, the court could assist the pro se Plaintiff by correcting the defective complaint. In the Plaintiff's case, the opposite scenario was presented, Plaintiff had stated a proper cause of action, but not the facts supporting it.[25] The Court found that the Rhode Island District Court had afforded Plaintiff the appropriate leniency.[26]

In deciding Plaintiff's second appeal, the Court of Appeals reviewed the Rhode Island District Court's denial of Plaintiff's Rule 60(b) motion for an abuse of discretion.[27] The Court acknowledged that the District Court had reviewed Plaintiff's proposed amended complaint in the context of that motion.[28] The Court of Appeals found that the District Court had not abused its discretion in denying the Plaintiff's claim for relief under Rule 60(b)(6), because the Plaintiff had failed to demonstrate either a colorable RICO claim or exceptional circumstances which would have entitled him to the requested relief.[29] The court affirmed both of the District Court's judgments.

---

[24] Pet. App. pgs. 8-9.

[25] *Id.*

[26] Pet. App. pg. 9.

[27] Pet. App. pgs. 23 (Ftnt. 2), 10-13.

[28] Pet. App. pgs. 2-3 (Ftnt. 2), 10.

[29] Pet. App. pgs. 11-13.

B. Statement of Facts

Plaintiff filed his original complaint in the Rhode Island District Court on February 17, 1995. Affording the Plaintiff the appropriate leniency and assuming that his allegations are true, which Defendant Greenwood has consistently maintained that they are not, the following are the facts which the Plaintiff has alleged in support of his RICO claim.

The Plaintiff's verified complaint alleges that in October of 1988 he had entered into a purchase and sale agreement with Defendant William Larson for the sale of 47 Maple Street in Providence, Rhode Island.[30] Plaintiff was the owner of that real property.[31] The agreement was contingent upon Larson obtaining financing. The Plaintiff hired Greenwood as an attorney to represent him in the sale of that property and to draft the purchase and sale agreement.[32] Larson placed a $5,000 deposit on the property, which Greenwood held in escrow for the Plaintiff's benefit.[33] On October 20, 1988, Plaintiff was notified by Larson that he would be unable to obtain financing.[34] Plaintiff alleges that he then instructed Greenwood to return the $5,000 deposit to Larson, but that he failed to do so.[35]

---

[30] Pet. App. pg. 33.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

On December 16, 1988 Plaintiff entered into a second purchase and sale agreement relative to the same piece of property, 47 Maple Street.[36] The agreement was executed between the Plaintiff and Irwin Loft, who was acting as an agent of or principal for Capitol Center Associates Six (Loft Agreement).[37] It is alleged by Plaintiff that he was represented by Greenwood at that time.[38] Plaintiff received a $25,000.00 deposit when the Loft Agreement was executed.[39]

On December 19, 1988, Larson recorded the Larson Agreement in the land evidence records for the City of Providence.[40] Loft, on behalf of Capitol Center Associates Six, requested that MGT place a lien upon the real property at 47 Maple Street on December 27, 1988.[41] The lien was to secure the $25,000 given to the Plaintiff.[42] Subsequently, on March 8, 1989, Defendant Capitol Center Associates Six gave Plaintiff an additional $30,000 in "earnest money" for the purchase of 47 Maple Street.[43] The closing on the Loft Agreement took place on March 14, 1989.[44] On March 15, 1989 Larson filed a Lis Pendens against the property at 47 Maple Street based on the

---

[36] Pet. App. pg. 34.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

Larson Agreement.[45] On March 16, 1989, Plaintiff was informed by MGT that the closing would be voided due to the cloud Larson's lien had created on the title of 47 Maple Street.[46] Plaintiff alleges that the Loft Agreement contained a forged set of signatures which purportedly extended the time for performance of the agreement until August 1, 1989.[47] Plaintiff denies ever signing that extension.[48]

Larson sued the Plaintiff on March 18, 1989 for specific performance under the Larson Agreement.[49] It is alleged by the Plaintiff that Greenwood filed an answer on behalf of the Plaintiff before he was ever informed that he was being sued.[50]

Plaintiff alleges that on or about July 12, 1989 Greenwood and Loft requested that the Plaintiff executed a number of documents which he thought were "receipts."[51] Plaintiff received an additional $30,000.00 from Capital Center Associate Six when he signed those "documents."[52] Plaintiff alleges that he subsequently determined that those "receipts" were actually Promissory Notes and a Mortgage Deed on 47 Maple Street and two other properties then owned by the Plaintiff.[53]

---

[45] *Id.*

[46] *Id.*

[47] Pet. App. pg. 36.

[48] *Id.*

[49] Pet. App. pg. 34.

[50] *Id.*

[51] Pet. App. pg. 35.

[52] *Id.*

[53] *Id.*

The notes and mortgage ran to the benefit of Loft individually and were to secure the $85,000.00 given to the Plaintiff as payment toward the purchase of 47 Maple Street.[54]

After unsuccessful attempts by Loft to foreclose upon the Plaintiff's property in both 1991 and 1992, Loft transferred the Promissory Notes and Mortgage Deed to Jon and Carol Rosenblatt.[55]

Plaintiff's verified complaint alleges that the Defendants violated the Racketeering Influenced and Corrupt Organizations Act by conspiring with one another to defraud the Plaintiff out of his interests in real property on Maple Street.[56] He further alleges that in carrying out their scheme to defraud the Plaintiff, that the Defendants committed mail and wire fraud in violation of Federal Law.[57] Defendant Greenwood denies all of the Plaintiff's allegations relative to the RICO count.

II. ARGUMENT

A. PLAINTIFF HAS FAILED TO ESTABLISH FOR THE UNITED STATES SUPREME COURT A BASIS UPON WHICH THE COURT COULD RELY IN GRANTING CERTIORARI JURISDICTION.

Plaintiff Ahmed, as Petitioner to this court for Writ of Certiorari, has the burden of clearly and concisely articulating for both the court and opposing parties the issues

---

[54] *Id.*

[55] Pet. App. pgs. 36, 37.

[56] Pet. App. pgs. 37-39.

[57] Pet. App. pg. 39.

upon which he believes certiorari jurisdiction can be granted, as well as the specific facts which support those issues.[58] Plaintiff Ahmed's petition fails to meet this burden. Reading the petition, it is difficult, if not impossible, to decipher the reasoning upon which Plaintiff relies in support of his request for grant of writ of certiorari. As such, responding to Mr. Ahmed's claims is clearly attended by obstacles. Plaintiff's failure to succinctly establish understandable grounds for the granting of his petition should result in the denial of the same.

B. PLAINTIFF IS MISTAKEN IN HIS BELIEF THAT THE FIRST CIRCUIT COURT OF APPEALS SHOULD HAVE REVIEWED HIS PROPOSED AMENDED COMPLAINT AS THROUGH IT HAD BEEN CONSIDERED BY THE RHODE ISLAND FEDERAL DISTRICT COURT UNDER A RULE 12(b)(6) STANDARD.

As explained in the reply's statement of the case (supra), Plaintiff Ahmed pursued a Rule 60(b)(6) motion seeking to vacate the Rhode Island Federal District Court's dismissal of his original complaint. In support of said motion, Ahmed submitted a proposed amended complaint for the court's review. If the district court had granted the Rule 60(b)(6) motion, it was Ahmed's intent to file and proceed with the litigation based upon the proposed amended complaint.

In deciding whether to grant a Rule 60(b)(6) motion, it is incumbent upon the district court to determine the

---

[58] Sup. Ct. R. 10.

existence or absence of a number of essential criteria. One of the issues that the court must resolve in deciding whether to set aside a judgment under Rule 60(b)(6) is whether the moving party possesses a potentially meritorious claim, which if proven will bring success in its wake.[59] This criteria allows the court to avoid undertaking what would otherwise turn out to be the empty exercise of reinstating a claim which is doomed to fail. The moving party must satisfy this precondition prior to being entitled to Rule 60(b)(6) relief.[60]

In applying the Rule 60(b)(6) standard to Plaintiff Ahmed's motion, the Rhode Island Federal District Court was required to review the proposed amended complaint in the context of a Rule 60(b)(6) motion.[61] The district court found that the amended complaint, although longer and more detailed than the original complaint, was in substance the same, and did not persuade the court that Ahmed's claim was potentially meritorious.[62]

Section I of Ahmed's petition to this court erroneously asserts that the district court reviewed the proposed amended complaint in the context of a Rule 12(b)(6) motion.[63] This is an attempt by the Plaintiff to have the proposed amended complaint reviewed under a de novo standard. The Plaintiff, under the law, is not

---

[59] *Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 59 v. Super Line Transportation Company, Inc.*, 953 F.2d 17, 21 (1st Cir. 1992).

[60] *Id.*

[61] Pet. App. pgs. 2-3 (Ftnt. 2), 10-13.

[62] *Id.*; Pet. App. pgs. 10, 11-13.

[63] Petition pgs. 5-6.

entitled to such a review. Clearly, the district court reviewed the proposed amended complaint strictly in connection with its consideration of Ahmed's rule 60(b)(6) motion to vacate.[64] As such, the First Circuit appropriately reviewed the district court's denial of that motion for an abuse of discretion.[65] Plaintiff is incorrect in his assertion that the court's consideration of the motion to vacate and its examination of the amended complaint in conjunction therewith should have been reviewed on appeal under a de novo standard.

The erroneous contentions of Section I of Ahmed's petition does not provide this court with a basis upon which certiorari jurisdiction could be founded.

C. THE FIRST CIRCUIT COURT OF APPEAL'S DECISION IN THE UNDERLYING CASE IS NOT IN CONFLICT WITH ANY DECISIONS OF OTHER UNITED STATES COURTS OF APPEAL ON ANY IMPORTANT MATTER AND AS SUCH CANNOT PROVIDE THE PETITIONER WITH GROUNDS FOR GRANT OF WRIT OF CERTIORARI.

Certiorari jurisdiction of the United States Supreme Court is not available to a party as a matter of right, but rather is a matter of judicial discretion.[66] It is a power which should be exercised sparingly.[67] A Petition for Writ

---

[64] Pet. App. pgs. 2-3 (Ftnt. 2), 10-13.

[65] Pet. App. pgs. 10-13.

[66] Sup. Ct. R. 10.

[67] *Forsyth v. Hammond*, 17 S.Ct. 665, 106 U.S. 506, 41 L.Ed. 1095 (1897).

of Certiorari will be granted only for compelling reasons.[68] It is very important that the court be consistent in not granting the Writ of Certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeal.[69] Supreme Court Rule 10 states that one of the reasons considered by the Court in deciding whether or not to exercise its discretion over certiorari jurisdiction is whether the underlying decision of the Court of Appeals is in conflict with the decision of another United States Court of Appeals on the same important matter.[70]

Section II of Plaintiff Ahmed's petition attempts to present the argument that the First Circuit Court of Appeal's decision in this case is in conflict with decisions of other United States Courts of Appeal.[71] The Petitioner states:

> "[The Plaintiff] should have been afforded a liberal interpretation of the 'second determination' Becher principle, especially in the face of the other circuit's opinions that would be in disagreement with the First Circuit's."[72]

---

[68] Sup. Ct. R. 10.

[69] *Layne & Bowler Corporation v. Western Well Works, Inc., et al.*, 43 S.Ct. 422, 423-424, 261 U.S. 387, 392-393, 67 L.Ed. 712 (1923).

[70] Sup. Ct. R. 10(a).

[71] Petition at pgs. 7, 10.

[72] Petition at pg. 4.

Despite this assertion, Ahmed fails to identify a single case from another circuit court which supports his belief of the existence of a conflict over an important issue of law.

The First Circuit, when considering a Plaintiff's ability to state a claim sounding in RICO, where the predicate acts giving rise to that claim are alleged mail and wire fraud, found:

> "In a RICO mail and wire fraud case, in regards to the details of just when and where the mail and wires were used, we hold that dismissal should not be automatic once the lower court determines that 9(b) was not satisfied. In an appropriate case, where, for example the specific allegations of the Plaintiff make it likely that the Defendant used interstate mail and telecommunications facilities, and the specific information as to use is likely in the exclusive control of the Defendant, the Court should make a second determination as to whether the claim as presented warrants the allowance of discovery and if so, thereafter provide an opportunity to amend the defective complaint."[73]

It is the application of this legal principle by the First Circuit to the underlying case which the Plaintiff claims created a "disagreement" with other courts of appeal.

In an effort to support this alleged conflict, Ahmed cites two district court cases and a bankruptcy case out of the Eastern District of New York.[74] None of these cases,

---

[73] *New England Data Services, Inc. v. Becher*, 829 F.2d 286, 290 (1st Cir. 1987).

[74] Petition at pg. 9.

as cited by the Plaintiff, contain any legal issues which are in conflict with the legal standards set out in the *Becher* case. In fact, none of the three cited cases even mention the 'second determination' issue. Two of the cases do not concern RICO causes of action at all,[75] and as such are clearly irrelevant to this petition, and the third case, in which a RICO claim is alleged, has no bearing upon the 'second determination' issue because the case is not considered in a 12(b)(6) context.[76]

What the Plaintiff is doing is attempting to create the appearance of a conflict between the courts of appeal where none exists. The true basis of the Plaintiff's claim to entitlement of certiorari jurisdiction, although it is couched in terms of a conflict, is his disagreement with how the lower courts applied the legal standard applicable to Federal Rule 12(b)(6) to his claim. Plaintiff states:

> "It is unreasonable for the First Circuit to suggest that the pro se complaint does not accord itself favorably with this standard."[77]

The "standard" to which Plaintiff refers is the Rhode Island District Court's application of the Rule 12(b)(6) standard to his original complaint, and the First Circuit Court of Appeal's affirmation of the District Court's dismissal of it.

---

[75] In re: *Harvard Knitwear, Inc.*, 153 B.R. 617 (E.D.NY 1993); *Joseph Victori Wines, Inc. v. Vina Canta Carolina S.A., et al.*, 933 F.Supp. 347 (S.D.N.Y. 1996).

[76] *First American Corp., et al. v. Sheikh Zayed Bin Sultan Al-Nahyan, et al.*, 948 F.Supp. 1107 (D.C. 1996).

[77] Petition at pg. 7.

The Plaintiff should not be allowed to conjure up a basis for granting his petition. Despite Plaintiff's assertions, there is no conflict of importance between the courts of appeal due to the issues arising out of this case. What the Plaintiff has alleged is a misapplication of a rule of law to his factual claim. Although Greenwood has no doubt that this alleged misapplication is important to the Plaintiff, it is of little importance to the public as a whole.[78] This Court should not grant the Plaintiff's petition for Writ of Certiorari based upon an alleged misapplication of a properly stated rule of law.[79]

D. GREENWOOD OBJECTS TO SECTION III OF PLAINTIFF'S PETITION IN THAT IT CONTAINS MISSTATEMENTS OF FACT AND INAPPROPRIATE FORM.

Greenwood asserts that the information set forth in his statement of the case contained herein provides an accurate rendition of what the Plaintiff pled in his original complaint as submitted in the District Court. Section III of the Plaintiff's petition is an attempt to mislead the Court, by providing a blurred picture of what was properly before the District Court. The information contained in Section III is a combination of allegations made in Plaintiff's original complaint, Plaintiff's proposed amended complaint, unfounded legal opinions, Plaintiff's

---

[78] Sup. Ct. R. 10; *Layne & Bowler Corporation;* 43 S.Ct. at 423-424, 261 U.S. at 392-393, 67 L.Ed. 712.

[79] Sup. Ct. R. 10.

"hyperbolic assertions" and rank speculation. It is virtually impossible to decipher the origins of the information contained in this section of the petition, and Greenwood objects to having to do so in an effort to respond to it.

In addition, Defendant Greenwood objects to Plaintiff's characterization in this section of the petition of the existence of "proven facts."[80] All of the "facts" contained in this section of the petition, at best, were simply allegations of the Plaintiff. In the context of the District Court's consideration of Defendants' 12(b)(6) motion, the allegations from the Plaintiff's original complaint were accepted as true. This, however, clearly does not establish those "facts" as proven. In fact, much of the information that the Plaintiff would have this Court believe to be "proven facts," is in reality unfounded legal opinions, speculation and unreasonable assumptions of the Plaintiff.[81] The Court should disregard these tactics of the Plaintiff.

Greenwood also objects to the Plaintiff's use in Section III of his petition of quotations without providing the slightest indication as to their origin.[82] It is impossible for

---

[80] Pet. pages 10-24.

[81] For example, see petition, pages 13, (" . . . the agreement was considered null and void . . . "), 13-14 (" . . . the agreement would have been null and void without ambiguity"), 15 ("Greenwood drafted the 2nd PSA and ran the risk of committing malpractice, . . . "), 17-18 ("An 'earnest money' payment is a unilateral exchange, and there was no reciprocal obligation on the part of the Plaintiff").

[82] Petition, page 11 (footnote 8), 17, 22.

Greenwood to fashion a response to information which simply appears from nowhere, hanging in mid-air.

For these reasons, Plaintiff's petition should be denied.

E. THE ASSERTION IN SECTION III OF PLAINTIFF'S PETITION, THAT THE RHODE ISLAND DISTRICT COURT AND THE FIRST CIRCUIT COURT OF APPEALS COMMITTED ERRONEOUS FACTUAL FINDINGS, DOES NOT PROVIDE A BASIS UPON WHICH THE UNITED STATES SUPREME COURT COULD RELY IN GRANTING CERTIORARI JURISDICTION.

Once the Plaintiff's hyperbolic assertions are weeded from Section III of his petition, it appears that Plaintiff is arguing that the lower courts misapplied the facts before them, did not provide Plaintiff with the reasonable inferences that flowed from those facts, and as a result improperly dismissed a properly plead RICO cause of action. This argument is meritless. The Plaintiff has continuously refused to recognize that the minimal facts which he was able to plead were insufficient to support a colorable RICO claim. Not once through the litigation of this matter through innumerable forums has Plaintiff been able to clearly and concisely explain to any Court, how the alleged facts established the existence of an enterprise between Greenwood, a lawyer, and Mortgage Guarantee and Title Company, a title company hired by a third-party to do title work, nor has Plaintiff been able to clearly explain how this alleged enterprise engaged in a

pattern of racketeering which threatened to continue into the future.

The District Court and Court of Appeals considered the facts before them, they afforded the Plaintiff the leniency to which he was entitled, they drew the inferences which reasonably flowed from those facts, and taking all of that into consideration concluded that the factual basis of a RICO action had not and could not be pled. This Court should be reluctant to grant a petition for Writ of certiorari when the asserted error consists of alleged erroneous factual findings.[83] The Plaintiff's petition for grant of Writ of Certiorari should be denied.

III. CONCLUSION

Plaintiff has failed to establish for this court any basis upon which certiorari jurisdiction could be granted. As such, and for the reasons set forth above, the Plaintiff's petition for Writ of Certiorari should be denied.

Respectfully submitted,

Respondent,
Charles Greenwood,

By His Attorneys,

CHRISTOPHER M. ORTON, Esq.
Counsel of Record

FRANCIS X. FLAHERTY, Esq.

LAW OFFICE FRANCIS X. FLAHERTY
The Summit West, Suite 210B
300 Centerville Road
Warwick, Rhode Island 02886
(401) 737-8700

---

[83] Sup. Ct. R. 10.